CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1989

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PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-292
OAL DOCKET NO. CCC 2479-87
ORDER NO. 89-21-12

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

Complainant, :

v. :

ADAMAR OF NEW JERSEY, INC., d/b/a :
TROPICANA HOTEL AND CASINO, ET AL.

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 8, 1989, and May 24, 1989.

IT IS on this 30th day of June 1989, ORDERED that the portion of the initial decision finding violations of N.J.A.C. 19:45-1.9(b)(3) is rejected for the reasons stated on the record at the Commission's public meeting of May 24, 1989; and

IT IS FURTHER ORDERED that the portion of the initial decision granting a motion to dismiss charges under N.J.A.C. 19:45-1.2(c)(3) is rejected for the reasons stated on the record, and the charges are hereby reinstated and violations

are found in a number to be determined by the administrative law judge on remand; and

IT IS FURTHER ORDERED that the findings by the administrative law judge with respect to cash complimentaries and N.J.S.A. 5:12-101(a)(2) are rejected as inconsistent with the Commission's prior rulings in State v. Boardwalk Regency Corporation, OAL Docket No. CCC 02622-89, Agency Docket Nos. 87-290 and 88-177 and State v. GNOC Corp., OAL Docket No. CCC 02621-89, Agency Docket No. 87-291;

IT IS FURTHER ORDERED that the findings of the ALJ with respect to N.J.S.A. 5:12-101(a)(1) are affirmed essentially for the reasons expressed by the Commission in State v. BRC, supra. and State v. GNOC, supra.;

IT IS FURTHER ORDERED that, for the reasons stated on the record, the matter is remanded for priority scheduling to the OAL for consideration of whether any violations by any of the respondents occurred herein regarding N.J.S.A. 5:12-100(e) and -99, and whether such violations, if any, are of a continuing nature for purposes of N.J.S.A. 5:12-123(a).

IT IS FURTHER ORDERED that, for the reasons stated on the record, the matter is remanded to the OAL for reconsideration by the ALJ of his findings involving N.J.S.A. 5:12-101(c) in light of the Commission's prior rulings in State v. BRC, supra., and State v. GNOC, supra.;

ORDER NO. 89-21-12

IT IS FURTHER ORDERED that, as stated on the record, the ALJ, on remand, reassess and re-evaluate his penalty recommendations in light of the totality of violations as may be found to exist, after giving due consideration to the Commission's rulings herein and in State v. BRC, supra, and State v. GNOC, supra.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2479-87
AGENCY DKT. NO. 87-292

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ADAMAR OF NEW JERSEY, INC.,
D/B/A TROPICANA HOTEL AND CASINO
AND ROBERT JAMES, RICHARD BREWER,
ROBERT KESEL, JAMES SATTAZAHN
AND EMIL RUSSELL,
Respondents.

Joseph M. Nardi, III., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Alfred R. Scerni, Jr., Esq., for respondent James Sattazahn (Scerni & Holden, attorneys)

Mark H. Sandson, Esq., for respondents Adamar of New Jersey, Inc., Robert James, Richard Brewer, Robert Kesel and Emil Russell (Hankin, Sandson & Sandman, attorneys)

Record Closed: November 1, 1988 Decided: January 23, 1989

BEFORE **RICHARD MURPHY**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks sanctions of the Casino Control Act against the above corporate and individual licensees, pursuant to N.J.S.A. 5:12-129 for a variety of alleged violations involving so called "cash comps" provided to a casino patron. Specifically, the Division alleges that casino patron Antonio Chan was provided with "Cash-Paid Out" disbursements on five occasions between December of 1985 and August of 1986 which were purportedly intended as reimbursement for travel expenses but, in actuality, were paid to Chan to reduce his gambling losses at the Tropicana. The Division claims that these payments of "cash comps" to Chan violated the provisions of the Casino Control Act, as well as regulations promulgated by the Casino Control Commission (Commission) as to complimentary services and recording practices. See, N.J.S.A. 5:12-14a and c; N.J.S.A. 5:12-101a; N.J.A.C. 19:45-1.9(b)3, 1.25, 1.2(c)3.

PROCEDURAL HISTORY

The Division filed a complaint in this case with the Commission on February 19, 1987, and the respondents requested a hearing on March 26, 1987, with respondent Sattazahn individually requesting a hearing on March 16, 1987. The matter was transmitted to the Office of Administrative Law for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq on August 13, 1987, and a prehearing conference was conducted by the Honorable Edgar Holmes, ALJ, on June 15, 1987. Prehearing briefs were filed by April 14, and the hearing scheduled for September 1 of 1987 was adjourned because discovery had not been completed.

On October 6, 1987, respondents moved before the Commission for an interlocutory judgment on the issue of the legality of "cash comps" and for a stay of these proceedings. This motion for interlocutory relief was denied by the Commission on December 9, 1987. Further hearing dates scheduled for December 2 through 4 of 1987 were adjourned pending the Commission's action as well as respondent's motion for partial summary decision, which was filed on January 13, 1988. The Division replied to the respondent's partial summary decision motion and dismissal on February 14, 1988.

In the interim, the provisions of the Casino Control Act pertaining to so-called "cash comps" were amended on February 1988. In light of the legislative amendment, respondent's motion for partial summary decision and dismissal were addressed at the hearing and are resolved below. After motions and a ruling on April 5 as to discovery, followed by a request for submission of additional documentation and information, the case was scheduled for hearing on August 29, 1988. Prior to that date, the parties were able to stipulate to many of the facts in this matter and the hearing was consequently completed on August 29. All post-hearing submissions were received by November 1, 1988, and the record was closed on that date.*

FINDINGS OF FACT

The Division alleges, and the respondents do not deny, that Tropicana employees authorized five cash paid-out slips in 1985 and 1986 to casino patron Antonio Chan, an established credit patron since 1981. Chan is a "high roller" who frequently bets $10,000 on a hand and has a habit of paying his gambling debt before leaving the Tropicana and returning to his home in the Philippine Islands, or venturing on to another casino.

The dates and amounts of the five payments in question are as follows:

December 14, 1985	$12,500
December 14, 1985	$8,500
May 14, 1986	$25,200
August 17, 1986	$12,800
August 24, 1986	$16,800

All of the cash paid out slips were signed by Chan, and four of them stated that the purpose of the payment was for airfare, but that no tickets were available. No other documentation was obtained from Chan or noted in Tropicana's records. As to the payment to Chan on August 17, 1986 for $12,800, respondents Brewer and Kesel obtained two airline tickets from him for a total of $4,542.60, but these do not relate to the August 17 date.

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* The date for submission of the initial decision was extended from December 16, 1988 until December 29, 1988, and again until January 6 and 13 because of priority given another pending Commission decision, as well as other pending decisions. An additional extension until January 20, 1989, was granted because of intervening developments in another case.

There is also no question that, during the period of these payments, Chan ran up substantial gambling debts at the Tropicana losing as much as $300,000 on some occasions. The Division alleges that Chan used at least three of these cash payments to redeem outstanding counter checks issued to him on credit by the Tropicana: December 14, 1985 ($8,500); May 14, 1986 ($25,200); August 24, 1986 ($16,800).

The Tropicana employees who were involved in approving cash paid out to Chan were Robert James, Vice President for Casino Operations, who had approval of airfare up to $25,000, Richard Brewer, Casino Manager, with authority to $12,500, Robert Kesel, an Assistant Casino Manager, with the same level of approval authority, and Emil Russell, Casino Shift Manager, who was authorized to approve up to $2,000 in airfare comps (J-34). Also involved and named as a respondent is James Sattazahn, who was also an Assistant Casino Manager with a $12,500 airfare comp approval line. These Tropicana employees were involved in the above transactions as indicated:

December 14, 1985 ($12,500): James and Sattazahn
December 14, 1985 ($8,500): James and Kesel
May 14, 1986 ($25,200): James and Russell
August 17, 1986 ($12,800): Brewer and Kesel
August 24, 1986 ($16,800): James, Brewer and Kesel

These facts are set forth in more detail in stipulations entered into by the parties at the hearing on August 29, 1988, which are set forth in full below. The first stipulation is between the Division and Adamar, as well as individual respondents Robert James, Richard Brewer, Robert Kesel and Emil Russell, and stated that:

1. Respondent, Adamar of New Jersey, Inc. d/b/a Tropicana Hotel/Casino (hereinafter called 'Tropicana'), is now and at all times referenced herein has been a corporation which was incorporated on September 28, 1978 and now and at all times referenced herein has had its principal place of business located on the Boardwalk between Brighton and Iowa Avenues in the City of Atlantic City, County of Atlantic, State of New Jersey.

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

3. Tropicana is the holder of, and operates pursuant to, a Certificate of Operation effective November 26, 1981 at which time Tropicana was the holder of a temporary casino permit. Tropicana has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all referenced herein. Said Certificate of Operation entitled Tropicana to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Respondent Robert James is the holder of a casino key employee license, #62-11, originally issued by the Commission on May 25, 1978. At all times relevant to this matter, Mr. James was employed by Tropicana as Vice President for Casino Operations.

5. Respondent Richard Brewer is the holder of a casino key employee license, #798-11, originally issued by the Commission on August 7, 1980. At al times relevant to this matter, Mr. Brewer was employed by Tropicana as Casino Manager.

6. Respondent Robert Kesel is the holder of a casino key employee license, #738-11, originally issued by the Commission on February 27, 1980. At all times relevant to this matter, Mr. Kesel was employed by Tropicana as an assistant Casino Manager.

7. Respondent Emil Russell is the holder of a casino key employee license, #1358-11, originally issued by the Commission on December 8, 1980. At all times relevant to this matter, Mr. Russell was employed by Tropicana as a Casino Shift Manager.

8. On or about December 6, 1981, a patron by the name of Antonio Chan was granted a credit amount at Tropicana with an approved credit limit of $200,000. As of December 13, 1985, patron Chan's approved credit limit was $300,000. A copy of patron Chan's credit application is attached hereto as Joint Exhibit 1.

9. In his application for credit at Tropicana, patron Chan represented to Tropicana credit personnel that he resided at 1229 Acacia Street, Das Marinas Village, Philippines and that he was the President of World Wide Sugar Corp., which address was given as 100 Wall Street, New York, New York 10001.

10. On December 13, 1985, patron Chan was issued counter checks #612721, #612731 and #612778. Each counter check was payable in the amount of $100,000. According to player rating records maintained by Tropicana, patron Chan sustained net gaming losses of $250,000 on December 13, 1985. Copies of the 3 counter checks are attached hereto as Joint Exhibits 2 through 4.

11. Patron Chan partially redeemed counter check #612731 at or about 12:05 a.m., on December 14, 1985 (gaming day December 13, 1985) with $50,000 in gaming chips. Tropicana cage personnel processed Redemption Receipt #150571 to record the partial redemption transaction. Tropicana cage personnel also processed replacement counter check #612795 in the amount of $50,000 on the credit account of patron Chan to reflect the unpaid balance of $50,000 from counter check #612731. Copies

of Redemption Receipt #150571 and counter check #612795 are attached hereto as Joint Exhibit 5 and 6.

12. On December 14, 1985, at or about 7:21 p.m., Tropicana cage personnel processed Redemption Receipt #150808 for the purpose of redeeming counter checks #612721 and #612778 on the credit account of patron Chan. Said counter checks were redeemed with $200,000 in cash. A copy of Redemption Receipt #150808 is attached hereto as Joint Exhibit 7.

13. On December 14, 1985, at or about 7:33 p.m., Tropicana cage personnel processed Redemption Receipt #150814 for the purpose of partially redeeming counter check #612795, the preparation of which is described in paragraph 11, supra. Said counter check was partially redeemed with $41,500 in cash. A copy of Redemption Receipt #150814 is attached hereto as Joint Exhibit 8.

14. Following the partial redemption of counter check #612795 as described in paragraph 13, supra, Tropicana cage personnel processed replacement counter check #613187 in the amount of $8,500 on the credit account of patron Chan to reflect the unpaid balance of $8,500 from counter check #612795. A copy of counter check #613187 is attached hereto as Joint Exhibit 9.

15. On December 15, 1985 (gaming day December 14, 1985), at or about 1:49 a.m., Tropicana cage personnel processed Redemption Receipt #150979 for the purpose of redeeming replacement counter check #613187 on the credit account of patron Chan. Said counter check was redeemed with $8,500 in cash. A copy of Redemption Receipt #150979 is attached hereto as Joint Exhibit 10.

16. Following the redemption of replacement counter check #613187 as described in paragraph 15, supra, patron Chan had no outstanding credit balance at Tropicana.

17. On December 14, 1985, Tropicana recorded 2 cash payments to patron Chan. The 2 payments were in the amounts of $12,500 and $8,500 respectively.

18. At the time that Tropicana paid patron Chan $12,500 in cash on December 14, 1985, Tropicana cage personnel prepared a Cash Paid Out slip to record the payment. The Cash Paid Out slip included the following handwritten notations: 'Airfare' and 'No Tickets Available' and was signed by James Sattazahn as authorizer. Robert James was not on the casino premises at the time the transaction was conducted but approved the payment by phone. A copy of the Cash Paid Out slip is attached hereto as Joint Exhibit 11.

19. At the time that Tropicana paid patron Chan $8,500 in cash on December 14, 1985, Tropicana cage personnel prepared a Cash Paid Out slip to record the payment. The Cash Paid Out slip included the following handwritten notations: 'Air,' 'per B.J.' and 'No Ticket Available' and was signed by Robert Kesel as authorizer. Robert James was not on the casino premises at the time the transaction was conducted but approved the payment

by phone. A copy of the Cash Paid Out slip is attached hereto as Joint Exhibit 12.

20. On May 14, 1986, patron Chan was issued counter checks #670874, #670877 and #670885. Each counter check was payable in the amount of $100,000. According to player rating records maintained by Tropicana, patron Chan sustained net gaming losses of $300,000 on May 14, 1986. Copies of counter checks #670874 and #670877 are attached hereto as Joint Exhibits 13 and 14.

21. Patron Chan partially redeemed counter check #670885 at or about 11:32 p.m. on May 14, 1986 with $25,200 in cash. Tropicana cage personnel processed Redemption Receipt #190515 to record the partial redemption transaction. Tropicana cage personnel also processed replacement counter check #670917 in the amount of $74,800 on the credit account of patron Chan. Copies of Redemption Receipt #190515 and counter check #670917 are attached hereto as Joint Exhibits 15 and 16.

22. On May 14, 1986, Tropicana recorded the payment of $25,200 in cash to patron Chan.

23. At the time that Tropicana paid patron Chan $25,200 in cash on May 14, 1986, Tropicana cage personnel prepared a Cash Paid Out slip to record the payment. The Cash Paid Out slip included the following handwritten notations: 'Airfare,' 'No tickets Available,' 'Destination Manila,' 'Antonio Chan #2875,' 'Per Bob James (phone approval)' The payment was authorized by Robert James, who was not on the premises at the time but approved the payment by phone. Emil Russell signed the Cash Paid Out slip as authorizer at the time the payment was recorded. A copy of the Cash Paid Out slip is attached hereto as Joint Exhibit 17.

24. On August 16 and 17, 1986, patron Chan gambled at Tropicana and, pursuant to player rating records maintained by Tropicana, sustained net gambling losses of $194,000.

25. On August 17, 1986, Tropicana recorded the payment of $12,800 in cash to patron Chan. Tropicana cage personnel prepared a Cash Paid Out slip to record the payment. The Cash Paid Out slip included the following handwritten notations: 'Chan, Antonio,' 'Twelve Thousand "Eight Hundred,' 'Das Marina's Village, Philippines,' 'Per D. Brewer.' Tropicana cage personnel obtained from patron Chan copies of 2 airline tickets in the total amount of $4,542.60. One ticket was issued by Philippine Airlines, was dated June 7, 1986, and listed Manila, Bacollod (located in the Philippines) and Manila as points of passage. The second ticket was issued by Pan Am, was dated February 12, 1985, and listed New York, San Francisco, Manila, Tokyo and New York as points of passage. The Cash Paid Out Slip was signed by Richard Brewer and Robert Kesel as authorizers. Copies of the Cash Paid Out slip and the 2 airline tickets are attached hereto as Joint Exhibits 18 through 20.

26. On August 23, 1986, patron Chan was issued counter check #812225 in the amount of $200,000. According to player rating

records maintained by Tropicana, patron Chan sustained net gaming losses of $200,000 on August 23, 1986. A copy of counter check #312225 is attached hereto as Joint Exhibit 21.

27. Patron Chan redeemed counter check #81225 at or about 6:18 p.m. on August 24, 1986 with $8,000 in cash and $192,000 in cage drafts. Tropicana cage personnel processed Redemption Receipt #221301 to record the redemption transaction. A copy of Redemption Receipt #221301 is attached hereto as Exhibit Joint 22 [sic].

28. On August 24, 19876, Tropicana recorded the payment of $16,800 in cash to patron Chan.

29. At the time that Tropicana paid Chan $16,800 in cash on August 24, 1986, Tropicana cage personnel prepared a Cash Paid Out slip in the amount of $16,800. The Cash Paid Out slip contained the following handwritten notations: 'Airfare,' 'Chan Antonio,' 'Per B. James,' 'No Tickets Available,' 'Sixteen Thousand Eight Hundred' 'Address Over.' The back of the Cash Paid Out slip contained the following notation: '1229 Acacia St., Philippines Das Marinas Village.' Richard Brewer and Robert Kesel signed the Cash Paid Out Slip as authorizers. Robert James was not on the casino premises at the time the transaction was conducted but approved the payment by phone. A copy of the Cash Paid Out slip is attached hereto as Joint Exhibit 23.

Respondent James Sattazahn also entered into a Stipulation at the hearing on August 29, and that Stipulation is set forth in full below:

1. Respondent, James Sattazahn is the holder of a casino key employee license, #1092-11, originally issued by the Commission on February 27, 1981. Mr. Sattazahn was employed by Tropicana during the period from November 20, 1982 to July 4, 1986 as an Assistant Casino Manager.

2. On December 14, 1985, Mr. Sattazahn was approached by a Tropicana patron by the name of Antonio Chan who requested a reimbursement for his airfare expenses. Patron Chan requested a reimbursement in the amount of $12,500. [The parties agree that the actual figure is higher, as discussed below.]

3. Following patron Chan's request, as described in paragraph 2, supra, Mr. Sattazahn telephoned Tropicana Vice President for Casino Operations Robert James and advised Mr. James of patron Chan's request. Mr. James informed Mr. Sattazahn that the payment of $12,500 could be made to patron Chan.

4. Following his conversation with Mr. James, as described in paragraph 3, supra, Mr. Sattazahn signed a Tropicana Cash Paid Out slip as the authorizer of the $12,500 payment to Mr. Chan. The Cash Paid Out slip also included the following handwritten notations: 'Airfare' 'No Tickets Available.' A copy of the Cash Paid Out slip is attached hereto as Joint Exhibit A.

At the hearing on August 29, 1988, the Division Agent Three who investigated this matter, Aldo Gonzalez, testified that at least two of the five cash paid outs to Chan were used by him to redeem counter checks, and thereby reduce his gambling debt. Specifically, Gonzalez saw a clear connection between the $8,500 cash paid out to Chan on December 14, supposedly for airfare, and the $8,500 in cash that Chan paid on the same gaming day to redeem a counter check in that amount (see Stipulations 14-19). The cash connection was also clear, in agent Gonzalez's view (which was not presented as an expert opinion) between the $25,200 paid to Chan on May 14, 1986, again for airfare to Manilla, with no tickets available, and the partial redemption of a counter check by Chan on that date with $25,200 in cash (Stipulations 20-23). Agent Gonzalez also suspected that other cash paid out funds had been used by Chan to redeem his markers, particularly the payment of $16,800 on August 24, 1986, but felt that the proof on these three other payments was not as convincing. Antonio Chan was apparently not interviewed by the Division, but in a statement provided to DGE, Assistant Casino Shift Cage Supervisor Mark Armideo stated that Chan had told him to apply the $25,200 cash paid out for airfare to his markers and gave a personal check for the rest on May 14, 1986 (J-42, page 10, lines 16-25).

I **FIND** as a matter of fact that Antonio Chan applied cash paid out to him in the amount of $8,500 and $25,200 on December 14, 1985 and May 14, 1986, respectively, to redeem or partially redeem counter checks issued to him on those dates and thus to reduce his gambling debt to the Tropicana. It may well be that Chan reduced his gambling debt with all of the cash paid out by the Tropicana for "airfare", but the proofs are sufficient only to support a finding that he did so on December 14, 1985 and May 14, 1986.

There is also no dispute and I **FIND** as fact that the Tropicana had agreed to reimburse Chan in the amount of $4,200 for each claimed airfare to the Philippines and that he would receive multiples of that amount based roughly on the amounts lost by him in gambling on any given occasion (T-138, 153). For example, when Chan lost $300,000 in an unlucky evening of gambling on August 24, 1986, the Tropicana provided him with the $16,800 in airfare reimbursement requested by him in light of his extensive losses and without any evidence that this amount corresponded to the actual cost of airfare for Chan and his party, which sometimes included as many as four or five other individuals traveling with him (T-155-158; 162-163).

As indicated, James Sattazahn's involvement was limited to the cash paid out to Antonia Chan on December 14, 1985 and involved reimbursement that totaled approximately $21,000. Sattazahn also offered character references from a number of employees at Trump's Castle, Bally's Grand, and Showboat, among others, who all lauded his character and integrity. None of the other individual respondents, who were represented by separate counsel, introduced any letters of reference.

Counsel for the respondents other than James Sattazahn did, introduce the company's policy as to cash paid outs, effective September 5, 1985, which provided that cash paid out slips were to contain the date and shift of the paid out, pay description or reason, the amount of the paid out, and the patron's name. The policy further provided that the Main Bank Cashier would photocopy documentation supporting cash paid outs, if that documentation was necessary and available. If unavailable, employees were obliged to note the lack of documentation in the "description section" (R-3, at paragraphs 3.6 and 3.7).

Except as indicated above, there is no dispute as to the facts in this matter as set forth in the stipulations and otherwise described, and I so **FIND**.

CHARGES

The complaint filed by the Division with the Commission on February 19, 1987 sought the following judgment:

Count I

(a) that respondent Tropicana, Sattazahn, James, and Kesel violated N.J.A.C. 19:45-1.2(c)3 in authorizing and processing two travel complimentaries on or about December 14, 1985 without obtaining detailed, supporting and subsidiary records to support the accumulation of costs and the number of persons provided with the complimentary services;

(b) that Tropicana, Sattazahn, James, and Kesel violated N.J.A.C. 19:45-1.9(b)3 in authorizing and processing two travel complimentaries on or about December 14, 1985 without recording the travel complimentaries and amount based on the actual costs to the licensee of having the third party provide such services;

(c) that respondent Tropicana violated N.J.S.A. 5:12-101a and/or c and N.J.A.C. 19:45-1.25(a) in the use of casino funds on or about December 14, 1985 for the purpose of providing a patron with credit or advance on something of value or which represented value to enable said patron to satisfy his debts incurred through his gaming activity as a player, to release or

discharge a patron's debts to a casino, and/or to allow patron to redeem his countercheck in an amount less than the amount for which the countercheck was drawn;

Count II

(a) that Tropicana, James, and Russell violated N.J.A.C. 19:45-1.2(c)3 in authorizing and processing a travel complimentary on or about May 14, 1986 without obtaining detailed, supporting and subsidiary records to support the accumulation of costs;

(b) that Tropicana, James, and Russell violation N.J.A.C. 19:45-1.9(b)3 in the authorization and processing of a travel complimentary on or about May 14, 1986 without recording the complimentary and amount based on the actual cost to the licensee of having the third party provide such services;

(c) that Tropicana violation N.J.S.A. 5:12-101a and/or c and N.J.A.C. 19:45-1.25(a) in the use of casino funds on or about May 14 for the purpose of providing a patron with credit or advance on something of value as stated under count 1;

Count III

(a) that Tropicana, Brewer, and Kesel violated N.J.A.C. 19:45-1.9(b)3 in authorizing a travel complimentary on or about August 17 without recording the complimentary and amount based on the actual costs to the licensee of having a third party provide such services;

Count IV

(a) that Tropicana, James, Brewer, and Kesel violated N.J.A.C. 19:45-1.2(c)3 in authorizing and processing a travel complimentary on or about August 24, 1986 without obtaining detailed, supporting and subsidiary records;

(b) that Tropicana, James, Brewer, and Kesel violated N.J.A.C. 19:45-1.9(b)3 in authorizing and processing a travel complimentary on or about August 24 without recording the travel complimentary and an amount based on the actual cost to the licensee;

(c) that Tropicana violated N.J.S.A. 5:12-101a and/or c and N.J.A.C. 19:45-1.25(a) in the use of casino funds on or about August 24, 1986, for the purpose of providing a patron with credit or advance on something of value as set forth in Count I.

The Division seeks sanctions under N.J.S.A. 5:12-129, 130.

MOTION TO DISMISS

Respondent's motion to dismiss the complaint was granted at the hearing as to alleged violations of N.J.A.C. 19:45-1.2(c)3 and denied as to the other alleged

violations set forth in the complaint. The Commission regulation controlling casino accounting records provides, in pertinent part, that:

> (a) Each casino licensee shall maintain complete, accurate, and legible records of all transactions pertaining to the revenues and costs for each establishment.
>
> (b) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on the accrual basis. Detailed, supporting, subsidiary records sufficient to meet the requirements of (c) below shall also be maintained in accordance with the requirements of this chapter.
>
> . . .
>
> (c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:
>
> . . .
>
> 3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. Such records shall include, on a daily basis, the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such person, and the person authorizing the receipt of such service. . . . N.J.A.C. 19:45-1.2(c)3 (emphasis added.)

The Division alleges that Tropicana and the individual licensees violated N.J.A.C. 19:45-1.2(c)3 in authorizing the five cash paid out slips described above without maintaining adequate "detailed, supporting and subsidiary records" in the form of airline tickets or other evidence.

Respondents' motion to dismiss the alleged violations of N.J.A.C. 19:45-1.2(c)3 was granted at the hearing for essentially the reasons expressed by the Honorable Solomon A. Metzger, ALJ, in an order issued in a similar but unrelated case involving Trump's Castle. See, OAL Dkt. Nos. CCC 825-87 and CCC 5301-87 (consolidated), Agency Dkt. Nos. 87-214 and 87-425 (Order Granting and Denying Motion for Partial Summary Decision of December 16, 1987). The regulation does not specifically require that such documentation as airline tickets be provided so long as the records maintained include the required information. In this instance, Tropicana's records adequately complied with the express requirements of the regulation and on that basis it is **ORDERED** that the complaint be dismissed as it alleges violations of N.J.A.C. 19:45-1.2(c)3.

REMAINING ISSUES

The following issues remain to be resolved:

1. Are cash complimentaries permitted under the Casino Control Act and the Regulations thereunder? If so, under what circumstances can they be given?

2. Did respondent Tropicana's conduct in the redemption transactions of patron Antonio Chan on December 14, 1985, May 14, 1986 and August 26, 1986 violate N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a)?

3. Did respondent Tropicana record travel complimentaries to patron Antonio Chan on December 14, 1985, May 14, 1986, August 17, 1986 and August 24, 1986 at amounts based upon the actual cost to the licensee of having a third party provide such services, as required by N.J.A.C. 19:45-1.9(b)3?

4. Did the following named respondents record travel complimentaries to patron Antonio Chan on the following dates at amounts based upon the actual cost to the licensee of having a third party provide such services, as required by N.J.A.C. 19:45-1.9(b)3?

    1. Robert James and James Sattazahn - December 14, 1985.
    2. Robert James and Robert Kesel - December 14, 1985.
    3. Robert James and Emil Russell - May 14, 1986.
    4. Robert James, Richard Brewer and Robert Kesel -August 17, 1986.
    5. Robert James, Richard Brewer and Robert Kesel - August 24, 1986.

5. Whether any penalties are warranted under N.J.S.A. 5:12-129, 130 against Tropicana and the individual licensees on the basis of the conduct alleged.

DISCUSSION AND CONCLUSIONS

(a) Violations

(1) Legality of "Cash Comps"

The Prehearing Order entered in this matter stated the first and threshold issue as "are cash complimentaries permitted under the Casino Control Act and the Regulations thereunder? If so, under what circumstances can they be given?" Whatever mystery may have once shrouded the question of "cash comps" has been lifted by the legislative amendment to the Casino Control Act passed in the course of this proceeding which provides that "cash comps," except as otherwise provided, are prohibited. See, L.1987, c.426, §5; N.J.S.A. 5:12-102(m).

The issue to be resolved here is whether the five payments made to Chan were lawful as complimentaries within the meaning of the Casino Control Act prior to this amendment. As their first line of defense, the respondents argue that the "cash paid outs" issued to Chan were lawful complimentaries under the Casino Control Act, prior to the amendment. Beyond the absence of any express prohibition restricting complimentaries in the form of cash in the Act, respondents cite the recent amendment as evidence that the Act did not, prior to the modification, prohibit cash complimentaries. Respondents also refer to various recommendations and proposals for amending the Act to buttress their argument that cash complimentaries were previously allowed in casinos, even if not dressed up as travel reimbursements or garbed in some other expressly approved form. (See R-1; R-2).

The Division argues that the plain language of the Act prior to the recent amendment as well as Commission regulations did not permit the unrestricted disbursement of cash from casino cage to casino patrons. It bases this argument on the express terms of N.J.S.A. 5:12-14(a), as well as the regulatory language set forth in N.J.A.C. 19:45-1.9. Because the plain language of the Act prior to amendment, as well as the express terms of the regulations, did not authorize unrestricted cash complimentaries, the Division argues that the subsequent amendment was not intended to prohibit that which was previously permitted, but was designed to more closely control the disbursement of all complimentary services, which were viewed by the Legislature as being subject to abuse and in need of closer monitoring.

I agree with the Division's analysis that the plain language of the Casino Control Act and Commission regulations prior to the amendment did not authorize or permit the issuance of "cash comps" in the form of the cash paid out provided by Tropicana on five occasions to Antonio Chan, nominally as reimbursement for airfare. Travel services have always been within the complimentary services contemplated by the statute and regulations. The question here is whether the respondents were authorized by the Casino Control Act to issue pure "cash comps" to Chan which were not connected to some other legitimate complimentary service, such as travel. I am persuaded by the Division's analysis of the statutory language, which is set forth in full at pages 10-17 of its prehearing brief, and **CONCLUDE**, substantially for the reasons set forth by the Division, that the plain language of the Act prior to the amendment and of the enforcing regulations did not authorize or permit the issuance of the sort of cash paid out to Chan by the Tropicana and its employees. Such a "cash comp" is not within the express terms of N.J.S.A. 5:12-14(a) or N.J.A.C. 19:45-1.9 and is not consistent with or contemplated by the procedures established by the regulations for recording and reporting of complimentary services. See, N.J.S.A. 5:12-14(a); N.J.A.C. 19:45-1.9. The Casino Control Act also expressly prohibits the giving of cash, checks, or credit to enable any person to take part in gaming activity as a player, and these restrictions also suggest that "cash comps" were not intended to be among the complimentary services permitted. See, N.J.S.A. 5:12-101(a)(1).

(2) Violation of the Credit Provisions

The Division alleges that the Tropicana gave funds in the form of cash paid out slips to Antonio Chan for the purpose of providing him with credit or an advance of something of value to enable him to satisfy his gambling debts or to release or discharge these debts and also to allow him to redeem his counter checks in an amount less than the amount for which the check was drawn, all of which is alleged to violate N.J.S.A. 5:12-101a and/or c and N.J.A.C. 19:45-1.25(a). The Casino Control Act provides as to credit that:

> 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;

> (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.
>
> * * *
>
> (c). . .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 other 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 dawn to the order of the casino licensee. (N.J.S.A. 5:12-101).

Regulations adopted by the Commission amplify this restriction and specify that:

> (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;
>
> 2. Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 19:45-1.29; or
>
> 3. Make any loan which represents any losses incurred by any player in gaming activity without receiving from said player in exchange therefor, a check in the amount of said loan, which check shall conform with the Casino Control Act and these regulations. (N.J.A.C. 19:45-1.25).

The Division seeks judgment that respondent Tropicana violated the above provisions but demands no sanction against the individual licensees on the basis of this conduct. Specifically, the Division charges that the three transactions conducted with patron Chan on December 14, 1985, May 14, 1986 and August 24, 1986 violated the statute and regulations by providing Chan with credit to redeem his counter checks. Beyond these three transactions, the Division perceives a pattern conduct by Tropicana reflected in all five transactions to reimburse him for gaming losses at a fixed percentage calculated at approximately 8.4 percent. Because Chan was a credit player, funds provided by Tropicana after his gambling

are viewed by the Division as enabling him to take part in the gaming activity within the meaning of N.J.S.A. 5:12-101(a) and N.J.A.C. 19:45-1.25(a). In addition to enabling (or at least encouraging) Chan to continue to gamble by giving him credit on his losses through purported travel complimentaries, Tropicana is also alleged by the Division to have discharged his debts without determining them to be uncollectible (which is unlikely given his great wealth) and also failing to make the proper written record.

Respondent Tropicana argues that the "cash paid outs" issued were, in fact, complimentaries not rebates as charged, and contends that the cash comps did not enable Chan to gamble because they were issued after he finished gambling and had zeroed out his account before leaving for the Philippines or some other casino.

Based on the above Findings of Fact that two of the "cash paid outs" were used by Chan to fully or partially pay his gambling debts by redeeming counter checks, I **CONCLUDE** that Tropicana's action constituted a discharge of a debt not shown to be uncollectable without the requisite written record in violation of N.J.S.A. 5:12-101(a)(2) and N.J.A.C. 19:45-1.25(a)(2). The proofs support by a preponderance of the believable evidence the Division's allegation that at least these two "cash comps" were provided to Chan and used by him to discharge his gambling debt. It may well be that all of the "cash comps" provided to Chan were intended, as the Division maintains, to provide a percentage rebate on gambling losses, but the Division's evidence establishes this only as to the two "cash paid outs", which were used for this purpose. I further reject the Division's argument that funds were provided to Chan to "enable him" to take part in gaming activity as a player, in violation of statute and regulations. The "cash paid outs" provided to Chan may have encouraged him to return on future occasions to the Tropicana's gambling tables, but they did not enable him to do so in the sense that he would have been unable to continue gambling without the cash comps. Even though Chan's gambling losses ran into the hundreds of thousands, he was apparently a better businessman than he was a gambler and needed no cash from the Tropicana to enable him to continue to indulge his fondness for games of chance. For these reasons, I **CONCLUDE** that the Division has failed to prove a violation of N.J.S.A. 5:12-101(a)(1) and N.J.A.C. 19:45-1.25(a)(1). I further **CONCLUDE** that the Division has proven a violation of N.J.S.A. 5:12-101(c) for substantially the reasons set forth in its post-hearing brief.

(3) Violation of the Record Keeping Provisions

Both Tropicana and the individual respondents are charged with violating the Commission regulation concerning recording of complimentary services or items which provides that:

> (a) A complimentary service or item is a service or item provided directly or indirectly by a licensee at no cost or at a reduced price.
>
> (b) All complimentary services or items shall be recorded as follows:
>
> 1. A complimentary service or item provided directly to patrons in the normal course of a licensee's business shall be recorded at an amount based upon the full retail price normally charged for such service or item by licensee;
>
> 2. A complimentary service or item not offered for sale to patrons in the normal course of a licensee's business, but provided directly to the licensee shall be recorded at an amount based upon the actual cost to the licensee providing such service or item;
>
> 3. A complimentary service or item provided directly or indirectly to a patron on behalf of the licensee by a third party not affiliated with the licensee shall be recorded at an amount based on the actual cost of the licensee of having the third party provide such service or item . . . . (N.J.S.A. 19:45-1.9(b)(3) [emphasis added].

The Division argues that the five "cash paid outs" given to Chan as described above were, in fact, reimbursements for his gambling losses and not travel complimentaries and were therefore inaccurate and misleading complimentary records which did not reflect the actual cost to the licensee of having a third party provide travel services, because no such services were provided.

Tropicana and the individual respondents argue that N.J.A.C. 19:45-1.9(b)(3) was not violated because the complaint did not allege and the Division has failed to show that any airline company either directly or indirectly provided anything to Chan on behalf of the casino. Respondent's claim that the lack of evidence that any airline was providing complimentary travel on behalf of the Tropicana prevents any finding of a violation of N.J.A.C. 19:45-1.9(b)(3).

The Division's argument is based on the factual premise that the five "cash paid outs" given to Chan were provided as rebates for gambling losses under the guise of travel complimentaries. Since no travel actually was provided, the Division argues that the "actual cost" of travel was not properly recorded under N.J.A.C. 19:45-1.9(b)(3). As discussed, the evidence submitted substantiates the two "cash paid outs" marked as covering airfare were, in fact, used by Chan to pay his marker.

The regulation does not require, as the respondents suggest, that some sort of specific agency relationship be established between the third party provider and the casino licensee: it is enough that the licensee reimburse the gambler for legitimate travel expenses and record those at their actual cost. The cost of Chan's travel to the Philippines was not stipulated to, but there is evidence that the price of a ticket at that time was approximately $3,900 (J-20). Chan apparently traveled to and from Atlantic City with an entourage of varying size, although the precise number of his traveling companions was not determined or ever seriously looked into by Tropicana or its employees. Chan's requests for "airfare" were honored with virtually no questions asked. The Tropicana assessed the reasonableness of his request for reimbursements on the basis of his gambling losses, and there is persuasive evidence that the amount of "cash paid outs" provided to Chan was not based on the actual cost of travel for him and his retinue but, rather, was calculated and assessed on the basis of his gaming losses, for which he received multiples of $4,200 calculated on the basis of his overall gambling loss for the day. Chan may have incurred actual travel costs equal to the five "cash paid out" slips issued, but whether or not he did, it is apparent that the Tropicana's recording of these supposed "airfare" complimentaries was based not on the actual cost for travel but was gauged on gambling losses suffered by Chan. Because all five of the "cash paid out" slips were issued on that basis, rather than on the actual cost of travel, I **CONCLUDE** that a violation of N.J.A.C. 19:45-1.9(b)(3) has been established as charged.

(b)Penalties

As to Tropicana, the Division urges imposition of a monetary penalty in the amount ranging from $35,00 to $50,000 for each of the three violations of N.J.S.A. 5:12-101(a)(c) and N.J.A.C. 19:45-1.25(a) and, further, at least $10,000 for each of the five violations of N.J.A.C. 19:45-1.9(b)(3). (As discussed above, only two violations of N.J.S.A. 5:12-101(a) and the corresponding regulation have been upheld). As to the individual respondents, the Division requests an appropriate monetary penalty and/or a letter of reprimand.

The Casino Control Act provides for the following supplemental sanctions:

> (1) Revoke the license or registration of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license or registration;
>
> (2) Revoke the license or registration of any person for willfully and knowingly violating an order of the commission directed to such person;
>
> (3) Suspend the license or registration of any person pending hearing and determination, in any case in which license or registration revocation could result;
>
> (4) Suspend the operation certificate of any casino for violation of any provisions of this act or regulations promulgated hereunder relating to the casino operation, including games, internal and accountancy controls and security;
>
> (5) Assess such civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed $10,000.00 in the case of any individual licensee or registrant, except that in the case of a casino licensee the penalty may not exceed $50,000.00;
>
> (6) Order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant;
>
> (7) Enter a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee or registrant;
>
> (8) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each licensee or registrant so sanctioned; or
>
> (9) Impose any or all of the foregoing sanctions in combination with each other. N.J.S.A. 5:12-129 [emphasis added].

The Division seeks no sanction beyond fines and reprimands. In considering appropriate sanctions in any particular case, the Commission is bound to consider the following factors:

> a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
>
> b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

> c. Any justification or excuse for such conduct by the licensee or registrant;
>
> d. The prior history of the particular license or registrant involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee or registrant to prevent further misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
>
> g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company or holding company inadvertently,unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself. N.J.S.A. 5:12-130 [emphasis added]

The Division argues that the credit violation gave Antonio Chan an unfair and unlawful advantage over the odds not provided to other players and thus posed the risk to the integrity of gaming operations. It views the recording violations as going to the heart of accounting controls and undermining regulation of complimentary services. Prior reported violations by Tropicana in different areas have been sanctioned by fines of up to $10,000 in the cases as the Division notes at pages 21 and 22 of the it's post-hearing brief. As to the element of purpose and knowledge (130b), the Division contends that the Tropicana considered the payments to Chan to represent reimbursement for his gaming losses rather than travel expenses and thereby intentionally sought to contravene the restrictions of the Act. The Division dismisses Tropicana's claim of justification or excuse based on the company's interpretation of the Casino Control Act prior to its recent amendment as to "cash comps". It also notes pending enforcement actions against individual respondents, Robert James, Richard Brewer and Robert Kesel concerning unrelated matters.

Respondent Tropicana and individual respondents James, Brewer, Kesel, and Russell, argue that they were operating under the belief that the issuance of "cash paid outs" was lawful and also acted in accordance with approved company policy as to records. (See, R-3). They claim therefore that their conduct was not a purposeful and knowing violation of the Act and regulations, but rather was based on a justifiable interpretation of the Casino Control Act and that the unintentional

nature of the violation precludes any penalty in this instance. Respondent James Sattazahn, who was individually represented, denies the single violation of N.J.A.C. 19:45-1.9(b)(3) with which he is charged and claims that his action in approving a "cash paid out" for Chan was reasonably based on the actual cost of travel and therefore should not be penalized.

As to Tropicana, the Division has shown two violations of the credit provision, N.J.S.A. 5:12-101(a)(2) and (c), and N.J.A.C. 19:45-1.25(a) and five violations of the complimentary recording regulation, N.J.A.C. 19:45-1.9(b)3. Each of the individual licensees has been proven to have violated N.J.A.C. 19:45-1.9(b)3 by failing to record the actual cost of the "travel" complimentary.

Both the credit violations and failure to comply with the complimentary recording regulations undermine the integrity of gaming operations in the sense that they gave an unfair gambling advantage to a "high roller" and concealed this favoritism under the guise of travel complimentaries which were not recorded at actual cost. This conduct cannot be lightly dismissed and seriously calls into question the fairness of Tropicana's practices and the accuracy of its records. Although Tropicana maintains that it acted under the belief that "cash comps" were lawful under the Casino Control Act as part of the recent amendment, this claim of lack of knowledge of the violation or of excuse is undermined by the fact that Tropicana employees recorded the "cash paid outs" as travel complimentaries. If the Tropicana and its employees justifiably believe that "cash comps" were permitted by the Casino Control Act, there would have been no need to justify them in terms of "airfare" and they could have been recorded as what they were: an agreement to comp Chan with cash based on the extent of his gambling losses. Under these circumstances, Tropicana's conduct was purposeful within the meaning of N.J.S.A. 5:12-130(b), and without justification or excuse. The action of the individual respondents in failing to record travel complimentaries at actual cost was also purposeful in the this sense, although there is some justification or excuse to the extent that they were following general company policy and established practice as to Antonio Chan.

The Commission must also consider the prior history of the particular licensee or registrant with respect to gaming activity. N.J.S.A. 5:12-130(d). The history of enforcement actions filed against Tropicana is set forth at pages 23-25 of the Division's post-hearing brief and shows one prior offense concerning credit violations for which a $10,000 fine was imposed (See, State of New Jersey v. Adamar

of New Jersey, Inc., Agency Docket No. 84-101 (Final Order August 23, 1985). Substantial financial penalties have been imposed in other matters for violations unrelated to credit or recording practices. Tropicana cited no corrective action taken to prevent future misconduct from recurring, although the recent amendment to the Casino Control Act will change practices as to complimentaries. Given the seriousness of the risk posed to the integrity of gaming, the purposeful and unjustified nature of conduct, as well as the prior enforcement history, I **CONCLUDE** that a $20,000 fine should be imposed on Tropicana for each of the two credit violations and I further **CONCLUDE** that a $5,000 fine be levied on the company for each of the five violations of N.J.S.A. 19:45-1.9(b)3 found to have occurred.

With respect to the individual respondents, I **CONCLUDE** that monetary penalties are warranted against individual respondents Robert James, vice-president for casino operations, and Richard Brewer, casino manager, and recommend that a $2,000 fine be imposed on both licensees in view of the nature of their positions of responsibility, and involvement in these transactions. I further **CONCLUDE** and recommend that a $1,000 fine be imposed on respondent Robert Kesel in light of his involvement in several of the recording transactions, as well as his prior disciplinary record. As to James Sattazahn, former assistant casino manager and Emil Russell, casino shift manager, I recommend that they receive letters of reprimand for their single violation of N.J.A.C. 19:45-1.9(b)3, which shall be made a permanent part of their file.

DISPOSITION

On the basis of the above Findings of Fact and Conclusions of Law, it is **ORDERED** that respondent Tropicana be fined $20,000 for each of two violations of N.J.A.C. 5:12-101(a)(2) and (c) and fined $5,000 each for five violations of N.J.A.C. 19:45-1.9(b)(3). It is further **ORDERED** that the complaint is **DISMISSED** insofar as it alleges violations of N.J.A.C. 19:45-1.2(c)3. It is further **ORDERED** that Robert James and Richard Brewer be fine $2,000, and that Robert Kesel be fined $1,000 for violations of N.J.A.C. 19:45-1.9(b)(3). It is further **ORDERED** that respondents James Sattazahn and Emil Russell receive letters of reprimand for violations of N.J.A.C. 19:45-1.9(b)3, which shall be included within their personnel file.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in

WITNESSES

For petitioner:

Aldo Gonzalez

For respondents:

James B. Perry
Richard Brewer
Robert James
Emil Russell
Robert Kesel
James Sattazahn

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-157
OAL DOCKET NO. CCC 761-88
ORDER NO. 89-3-14

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

Complainant, :

ORDER

v. :

ADAMAR OF NEW JERSEY, INC. :
AND ROBERT JAMES,

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the administrative law judge having filed an initial decision/settlement with the Casino Control Commission recommending that the Commission approve the parties' stipulation of settlement as fully dispositive of all issues in controversy; and the Commission having entertained oral arguments of the parties at its public meeting of November 23, 1988; and the Commission thereafter having deliberated on the matter and determined that the proposed settlement is inadequate,

IT IS on this 31st day of January 1989, ORDERED that the initial decision/settlement is rejected and this matter remanded to the Office of Administrative Law for further proceedings for the reasons stated at the meeting of January 18, 1989, which are incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 761-88
AGENCY DKT. NO. 88-157

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ADAMAR OF NEW JERSEY, INC., AND ROBERT JAMES,
Respondents.

Barth F. Aaron, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Mark H. Sandson, Esq., for the respondents (Hankin, Sandson & Sandman, attorneys)

Record Closed: October 3, 1988 Decided: October 4, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on December 7, 1987, seeking sanctions against the respondent's casino license and casino key employee license as provided for in N.J.S.A. 5:12-129 for alleged violations of the Casino Control Act. More specifically, the Division

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alleges that the respondents violated the provisions of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25(b) and N.J.A.C. 19:45-1.27 by granting or extending credit to one casino patron with full knowledge that the gaming chips obtained through that extension of credit were used by another casino patron whose credit privileges were suspended for further gaming, and violated the provisions of N.J.S.A. 5:12-102m, N.J.A.C. 19:45-1.2 and N.J.A.C. 19:45-1.9 by falsely recording as a complimentary a payment of a fee or commission for allowing a player whose credit privileges were suspended to continue to play on credit.

PROCEDURAL HISTORY

The Division filed a complaint with the Commission on December 7, 1987, seeking sanctions against the respondents for the above-alleged violations of the Casino Control Act. By answer dated January 6, 1988, and received by the Commission on January 13, 1988, the respondents denied the allegations and requested a hearing. On January 19, 1988, the Commission transmitted the matter to the Office of Administrative Law, where it was received on February 2, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before me on April 18 and 22, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Is the conferring of money or anything of value from one gaming patron to another gaming patron, wherein the conferrer has received the fund for the conferring of said money or thing of value from casino credit, violative of the Casino Control Act, specifically section 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27, assuming a casino licensee has knowledge of the conferring of said money or thing of value, has knowledge that the conferee is a person who may not receive casino credit because of an overdrawn credit account and has received said funds for the purpose of continuing his gaming activities?

B. Did the Tropicana or Robert James or any person acting on behalf of or under any arrangement with the Tropicana or Robert James provide or allow to any person any credit or advance of anything of value or which represents value with the knowledge that Harry K. Kim was thereby enabled to take part in gaming activity as a player while the credit privileges of Harry K. Kim were suspended as required by N.J.A.C. 19:45-1.27 in violation of N.J.S.A. 5:12-101a or N.J.A.C. 19:45-1.25(b)?

C. Did the Tropicana or Robert James or any person acting on behalf of or under any arrangement with the Tropicana or Robert James accept a counter check from Young N. Kang, Keum Y. Shin, Keum Hong Lee or Kyung Hui Paik with the knowledge that another person, to wit, Harry K. Kim, whose credit privileges had been suspended as required by N.J.A.C. 19:45-1.27, was enabled to take part in gaming activity as a player in violation of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(b)?

D. Does a casino licensee or one of its employees violate the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27 by extending a credit to a gaming partnership wherein one of the partners has been suspended from receiving casino credit while the other partner has drawn on casino credit, thus allowing the partner who has been suspended from receiving casino credit to continue play with the funds received through casino credit by his gaming partner?

E. Did either respondent violate N.J.S.A. 5:12-102m and N.J.A.C. 19:45-1.2 by reporting and recording as "miscellaneous good will" a $5,000 payment to Kyung Hui Paik, which payment is alleged to have been a commission, fee, or discount against her debt for the purpose of compensating, rewarding or encouraging Kyung Hui Paik to provide to Harry K. Kim gaming chips with the intent of allowing Harry K. Kim to continue to be a credit player at the Tropicana while his credit privileges were suspended?

F. Did either respondent violate N.J.S.A. 5:12-102m and N.J.A.C. 19:45-1.9 by issuing as a complimentary a payment of $5,000 to Mrs. Kyung Hui Paik for a purpose not authorized by statute or regulation?

G. Pursuant to N.J.S.A. 5:12-129 and 5:12-130, what is the appropriate penalty for each of the violations of statute and regulation proven?

A timetable for the submission of prehearing briefs was also set at the prehearing.

By letter dated May 10, 1988, and received by me on May 12, 1988, the respondents' attorney requested that issue "D" contained in the prehearing order be amended. On May 16, 1988, a telephone conference was held with all parties to discuss this request. By letter dated May 17, 1988, and received by me on May 20, 1988, the respondents' attorney submitted specific language for a revised issue "D." By letter dated May 23, 1988, and received by me on May 24, 1988, the Division responded to the respondent's request. On May 26, 1988, a second telephone conference was held with the parties to discuss this issue. At that time, I granted the respondents' request and confirmed my order in a follow-up letter, dated June 7, 1988. The revised issue "D" is as follows:

D. Does a casino licensee or one of its employees violate the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27 by extending credit to a gaming patron who thereafter forms a gaming partnership with another patron who is a person who may not receive casino credit because of an overdrawn credit account?

Also on May 26, 1988, I granted the Division's request for an extension of time to submit its prehearing brief. I received the Division's prehearing brief on May 31, 1988, and I received the respondent's response brief on June 28, 1988. Several telephone conferences were held throughout the summer on a variety of procedural issues.

A hearing was commenced on September 14, 1988, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, and continued into September 15, 1988. Late in the afternoon on September 15, 1988, the parties agreed to settle this matter. The hearing was adjourned, and the record remained open in order to afford the parties the opportunity to enter into a written settlement agreement. I received the written settlement agreement on October 3, 1988, and the record closed at that time.

The parties have agreed to a settlement of all issues in dispute and have prepared a stipulation indicating the terms thereof, which is attached and fully incorporated herein.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I further **CONCLUDE** that this matter is no longer a contested case. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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

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

October 4, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

10-5-88
DATE

Marianne Farrell
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 7 1988
DATE

Donald A. Tarkowski P.S.
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1	Not in evidence
J-2A	Memorandum of Leanor A. Mazzeo, dated September 15, 1987, re: Korean Players
J-2B	Tropicana Credit file for Young N. Kang
J-2C	Tropicana returned check file for Young N. Kang
J-2D	Tropicana collection file for Young N. Kang
J-2E	Tropicana credit file for Kyung Hui Paik
J-2F	Tropicana returned check file for Kyung Hui Paik
J-2G	Tropicana collection file for Kyung Hui Paik
J-2H	Tropicana credit file for Keum Y. Shin
J-2I	Tropicana all marker activity computer file for Keum Y. Shin
J-3J	Tropicana returned check file for Keum Y. Shin
J-3K	Tropicana collection file for Keum Y. Shin
J-3L	Tropicana credit file for Harry K. Kim
J-4M	Tropicana returned check file for Harry K. Kim
J-4M-2	Tropicana counter check control log for March 5, 1987, and April 2, 1987
J-4N	Tropicana collection file for Harry K. Kim
J-4O	Tropicana all marker activity computer file for Kyung H. Paik
J-4P	Tropicana player trip history computer file for Kyung H. Paik
J-4Q	Tropicana all marker activity computer file for Young N. Kang
J-4R	Tropicana player trip history computer file for Young N. Kang
J-4S	Tropicana player trip history computer file for Keum Shin
J-5T	Tropicana all marker activity computer file for Harry Kim
J-5U	Tropicana player trip history and player ratings for Harry Kim
J-5Y	Memorandum from John M. Galloway, dated April 22, 1987, re: Credit Insurance

J-5W	Memorandum from Lester Brzozowski, dated April 21, 1987, re: Credit Insurance
J-5X	Copies of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25
J-5Y	Interstate Protections Investigation asset investigations
J-5Z	Memorandum from Leanor A. Mazzeo, dated April 28, 1987, re: Korean Players
J-5AA	Memorandum from John Lee, dated May 7, 1987, re: Casino Credit
J-5BB	Memorandum from Lester Brzozowski, dated May 12, 1987, re: Credit Insurance
J-5CC	Memorandum from Lester Brzozowski, dated June 24, 1987, Korean Players Reserves
J-5DD	Memorandum from Leanor A. Mazzeo, dated April 28, 1987, re: Korean Players' Deposit Dates
J-6	Transcript of Sworn Interview of Sharon A. Altman Eisenberg dated October 9, 1987
J-7	Transcript of Sworn Interview of Matthew Sziegrenuk and James R. Swan, dated October 8, 1987
J-8	Transcript of Sworn Interview of Robert James, dated November 29, 1987
J-9	Transcript of Sworn Interview of John Lee, dated October 9, 1987
J-10	Tropicana credit and collection files for Keum Lee
J-11	Record of $5,000 Cash Paid Out dated April 3, 1987, paid to Kyung Hui Paik
J-12	Stipulation of facts

For the Petitioner:

P-1	Division of Gaming Enforcement Investigation Report, dated November 20, 1987, re: Harry Kim

For the Respondent:

R-1FID	(not in evidence) Atlantic City Press Newspaper Article

WITNESSES

For the Petitioner:

John Lee, former vice-president of oriental marketing at the Tropicana Hotel and Casino

Agent Judy Stephenson, Division of Gaming Enforcement

Sharon Eisenberg, former director of casino credit at the Tropicana Hotel and Casino

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-342
OAL DOCKET NO. CCC 5122-88
ORDER NO. 89-10-17

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	ORDER
ADAMAR OF NEW JERSEY, INC. t/a TROPICANA HOTEL & CASINO, AND MILLIE BROWNDORF, CAGE CREDIT SHIFT MANAGER,	:	
Respondents.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 8, 1989,

IT IS on this 10th day of March 1989, ORDERED that the initial decision is adopted, and

IT IS FURTHER ORDERED that Adamar of New Jersey, Inc. and Millie Browndorf are found to have violated N.J.S.A. 5:12-99 and 101(b) and N.J.A.C. 19:45-1.25(c) and Adamar is also found to have violated N.J.A.C. 19:45-1.11(c)6 and 9 and 1.11(g) for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Adamar of New Jersey, Inc. pay a total civil penalty of $5,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Millie Browndorf is hereby reprimanded.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 5122-88
AGENCY DKT. NO. 88-342

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ADAMAR OF NEW JERSEY, INC.,
t/a TROPICANA HOTEL & CASINO;
AND MILLIE BROWNDORF,
Respondents.

Christopher Pitts, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Mark H. Sandson, Esq., for respondents (Hankin, Sandson & Sandman, attorneys)

Record Closed: December 20, 1988 Decided: January 4, 1989

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

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The parties have agreed to a settlement and have prepared an executed settlement agreement indicating the terms thereof, which is attached and fully incorporated herein.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

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

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

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

January 4, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

1-6-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 9 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

None.

WITNESSES

None.

CARY EDWARDS
Attorney General of New Jersey
Attorney for Complainant
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: Christopher Pitts
Deputy Attorney General

Mark H. Sandson, Esquire
Hankin, Sandson & Sandman
30 South New York Avenue
Atlantic City, New Jersey 08401
Attorney for Respondents

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 05122-88
CCC Docket No. 88-342

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. ADAMAR OF NEW JERSEY, INC., t/a TROPICANA HOTEL and CASINO; and MILLIE BROWNDORF, CAGE CREDIT SHIFT MANAGER, Respondents.	STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

The matters involved having been discussed by and between the parties involved, Cary Edwards, Attorney General of New Jersey, attorney for complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Christopher Pitts, Deputy Attorney General, and Mark Sandson, Esquire,of Hankin, Sandson and Sandman, attorneys for Respondents Adamar of New Jersey, Inc. and Millie Browndorf and certain matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

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

2. Tropicana is now the holder of a casino license issued by the Commission authorizing Tropicana to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was initially issued to Tropicana effective on November 26, 1982, and most recently renewed on November 26, 1988. Tropicana has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Tropicana is the holder of, and operates pursuant to, a Certificate of Operation effective November 26, 1981, at which time Tropicana was the holder of a temporary casino permit. Tropicana has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles Tropicana to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Respondent Millie Browndorf holds a valid casino key employee license, #2305-11, which was initially issued by the

Commission on or about July 13, 1982 and most recently renewed on July 31, 1988.

5. Respondent Millie Browndorf is now and at all times referenced herein has been employed by Tropicana in the capacity of Cage Credit Shift Manager. Attached hereto and made a part hereof as Exhibit A is a copy of Tropicana's job description for the position of Cage Credit Shift Manager.

6. On June 8, 1987, shortly before 12:00 noon, an individual by the name of Joseph Tominaro telephoned Tropicana and spoke with Respondent Browndorf.

7. Pursuant to the telephone conversation referred to in paragraph 6 of this Stipulation of Facts and Settlement Agreement (hereinafter "Stipulation"), supra, Joseph Tominaro informed Respondent Browndorf that he would be arriving at Tropicana later that same day and that he would be bringing a certified check with him for gaming purposes. Joseph Tominaro provided Respondent Browndorf with information concerning the check so that said check could be verified prior to his arrival at the Tropicana. Specifically, Mr. Tominaro informed Ms. Browndorf that the check to be presented was numbered 2228X, dated June 8, 1987, in the amount of $5,000 and payable to Tropicana. Joseph Tominaro also informed Ms. Browndorf that the check was drawn on account number 3282061336 at the Bowery Savings Bank, 2154 86th Street, Brooklyn, New York.

8. In addition to the information described in paragraph 7 of this Stipulation, supra, Joseph Tominaro also provided Respondent Browndorf with a telephone number, (718)946-8087, representing that said number was that of the bank upon which the

check was drawn, and the name of a bank employee ("Dave Levine") representing that said person should be contacted in order to verify the check. Joseph Tominaro represented to Ms. Browndorf that the telephone number was that of the Bowery Savings Bank, located at 2154 86th Street, Brooklyn, New York, and that the name provided was that of a bank official.

9. Respondent Browndorf recorded the information provided by Joseph Tominaro during their telephone conversation of June 8, 1987 on a blank sheet of paper. A copy of said sheet of paper is attached hereto as Exhibit B and made a part hereof.

10. Respondent Browndorf relied solely upon the information provided to her by Joseph Tominaro. Ms. Browndorf did not consult the bank reference sources available to her nor did she contact telephone directory assistance to independently obtain the telephone number of the Bowery Savings Bank at 2154 86th Street, Brooklyn, New York.

11. Based upon the information provided to her by Joseph Tominaro, Respondent Browndorf telephoned the number provided by Mr. Tominaro at approximately 12:00 noon on June 8, 1987. Upon dialing said telephone number a person representing himself to be "Dave Levine" answered the telephone. "Mr. Levine" represented himself to be a Bank Manager and informed Respondent Browndorf that the check in question (#2228X) was "good".

12. A review of Tropicana's telephone charge records for the month of June, 1987 revealed that Respondent Browndorf's telephone call to the telephone number provided by Joseph Tominaro, (718) 946-8087, was made at 12:02 p.m. on June 8, 1987.

13. Respondent Browndorf documented her telephone conversation with "Dave Levine" and noted the fact that, "per Dave Levine", check #2228X was "good". Respondent Browndorf affixed her signature and license number, the date (June 8, 1987) and the time (12:00 noon) of the conversation on the same sheet of paper that Ms. Browndorf used to document her telephone conversation with Joseph Tominaro shortly before 12:00 noon. (See Exhibit B).

14. On June 8, 1987, at approximately 5:00 p.m., Joseph Tominaro arrived at Tropicana and presented check #2228X to Respondent Millie Browndorf. Said check was made payable to "Tropicana", was signed by Joseph Tominaro and was dated June 8, 1987. The numbers "228" were printed in the upper right hand corner of the check. Directly to the left of said numbers the number "2" was handwritten, and the letter "X" was also handwritten directly to the right of the printed numbers so that the check would appear to be numbered 2228X rather than 228. Said check (hereinafter "check #2228X") had the name "Joseph Tominaro" printed in the upper left hand corner, with the address "1867 W. 10th St. Brooklyn, 11223" handwritten beneath it. Handwritten adjacent to Mr. Tominaro's printed name was a telephone number, "718-372-8623". In addition, check #2228X was stamped with the words "Certified Check". A copy of check #2228X is attached hereto as Exhibit C and made a part hereof.

15. Upon being presented with check #2228X, Respondent Browndorf contacted Assistant Cage Supervisor Tom Carter, license #02257-11, and presented said check to Mr. Carter and advised him

that Joseph Tominaro requested to establish a customer deposit account with Tropicana.

16. Tom Carter then reviewed the written material prepared by Respondent Browndorf regarding Ms. Browndorf's conversation with "Dave Levine." Said material is more fully described at paragraphs 11 and 13 of this Stipulation, supra. (See Exhibit B).

17. Based upon Respondent Browndorf's representation that check #2228X had been verified, check #2228X was accepted by Mr. Carter and placed on customer deposit with Respondent Tropicana. Said customer deposit was processed at 5:13 p.m. on June 8, 1987 in the amount of $5,000. Customer Deposit receipt #295336 documents this transaction. Said receipt is signed by the patron and Cage Supervisor Carter. A copy of Customer Deposit receipt #295336 is attached hereto as Exhibit D and made part hereof.

18. On June 8, 1987, from approximately 5:19 p.m. until 8:30 p.m., the funds placed on customer deposit by Joseph Tominaro were withdrawn by him in five (5) separate $1,000 increments.

19. Respondent Tropicana deposited check #2228X in its depository bank account on or about June 9, 1987. Said check was subsequently returned unpaid to Tropicana on or about June 18, 1987.

20. Shortly after the return of check #2228X from Tropicana's depository bank on June 18, 1987, Tropicana notified the Division of the fraudulently presented check and criminal and regulatory investigations commenced.

21. The telephone number provided by Joseph Tominaro and relied upon by Respondent Browndorf, (718) 946-8087, is not the

telephone number of the branch of the Bowery Savings Bank located at 2154 86th Street, Brooklyn, New York. Nor is said telephone number the telephone number of any branch or office of the Bowery Savings Bank.

22. The telephone number of the branch of the Bowery Savings Bank upon which check #2228X is drawn (2154 86th Street, Brooklyn, New York) is (718) 373-1919. Said telephone number appears in the bank reference source utilized by Tropicana employees to obtain the telephone numbers of various banks and financial institutions (U.S. Savings and Loan Directory). Said telephone number is also the number provided by directory assistance for the branch of the Bowery Savings Bank located at 2154 86th Street, Brooklyn, New York.

23. Check #2228X, drawn on the account of Joseph Tominaro, was not, in fact, certified for payment by the Bowery Savings Bank.

24. The account upon which check #2228X was drawn, account #3282061336, was closed in September of 1986.

25. There was no employee by the name of "Dave Levine" employed at the branch of the Bowery Savings Bank upon which check #2228X was drawn.

26. As of June 8, 1987, Respondent Tropicana's internal procedures required Cage Credit Shift Managers or Credit Clerks to determine the validity of cash equivalents presented by gaming patrons. Respondent Millie Browndorf, in her capacity as Cage Credit Shift Manager, was responsible for determining the validity of check #2228X prior to its acceptance by Tropicana on June 8, 1987.

27. Respondent Millie Browndorf, in her capacity as Cage Credit Shift Manager, prepared documentation which represented that check #2228X was valid prior to its acceptance on June 8, 1987.

28. Based upon Respondent Browndorf's representation as to the validity of check #2228X, said check was accepted by Assistant Cage Supervisor Tom Carter on June 8, 1987.

29. Had Respondent Millie Browndorf placed a direct inquiry with the Bowery Savings Bank prior to the acceptance of check #2228X on June 8, 1987, Respondent Browndorf would have learned of the worthless nature of said check.

30. At all times relevant hereto, Respondent Browndorf was acting within the scope and in furtherance of her employment by and agency of the Tropicana.

31. By utilizing for verification only the information provided by Joseph Tominaro, Respondents Millie Browndorf and Tropicana failed to take sufficient steps to perform the necessary verification to determine the validity of check #2228X prior to its acceptance on June 8, 1987, in violation of N.J.A.C. 19:45-1.25(e).

32. By accepting check #2228X as a cash equivalent when, in fact, said check was not a cash equivalent, Respondents Tropicana and Millie Browndorf violated N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(e).

33. Respondent Tropicana, by requiring Cage Credit personnel and not general cashiers or their supervisors to determine the validity of cash equivalents prior to their acceptance violated N.J.A.C. 19:45-1.25(e), N.J.A.C. 19:45-1.11(c)6, N.J.A.C. 19:45-1.11(c)9 and N.J.A.C. 19:45-1.11(g).

34. Subsequent to the presentation of check #2228X by Joseph Tominaro, Respondent Tropicana altered its internal procedures to require General Cashiers or their supervisors and not Cage Credit personnel to determine the validity of cash equivalents presented by gaming patrons.

35. As part of the Division's investigation in the instant matter, sworn investigative interviews of Respondent Millie Browndorf and of Tropicana Assistant Cage Shift Supervisor Tom Carter were conducted on September 28, 1987. Transcripts of the sworn investigative interviews of Respondent Millie Browndorf and Assistant Cage Shift Supervisor Tom Carter are attached hereto and marked as Exhibits E and F, respectively.

SETTLEMENT

WHEREAS, the parties have endeavored to submit to the Commission a detailed submission of all of the material and relevant facts pertinent to the allegations contained in Complaint 88-342. Additionally, the parties submit for purposes of this Stipulation of Facts various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, Respondents Tropicana and Millie Browndorf acknowledge failing to take sufficient steps to perform the necessary verification to determine the validity of check #2228X prior to its acceptance on June 8, 1987, in violation of N.J.A.C. 19:45-1.25(e), and

WHEREAS, Respondents Tropicana and Millie Browndorf acknowledge accepting check #2228X as a cash equivalent when, in

fact, said check was not a cash equivalent, in violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(e), and

WHEREAS, Respondent Tropicana acknowledges violating N.J.A.C. 19:45-1.25(e), N.J.A.C. 19:45-1.11(c)6, N.J.A.C. 19:45-1.11(c)9 and N.J.A.C. 19:45-1.11(g) by requiring Cage Credit personnel and not General Cashiers or their supervisors to determine the validity of cash equivalents prior to their acceptance, and

WHEREAS, all of the allegations contained in the Division's Complaint in this matter are hereby resolved.

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

A. Respondent Millie Browndorf agrees to the issuance of a letter of reprimand pursuant to N.J.S.A. 5:12-129(8) for the aforementioned violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(e) in full and final settlement of the allegations set forth in Count I of the Division's Complaint.

B. Respondent Tropicana agrees to pay the sum of $5,000 to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned

violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25(e) and N.J.A.C. 19:45-1.11(c) and (g) in full and final settlement of the allegations set forth in Counts I and II of the Division's Complaint.

Dated: 12/19/88

By: _____
Christopher Pitts
Deputy Attorney General
Attorney for Complainant
State of New Jersey, Department of Law and Public Safety,
Division of Gaming Enforcement

Dated: 12/16/88

By: _____
Mark Sandson, Esquire
Hankin, Sandson & Sandman
Attorney for Respondents
Adamar of New Jersey, Inc.
and Millie Browndorf

112988/48

TABLE OF EXHIBITS

A. Tropicana's job description for the position of Cage Credit Shift Manager.

B. Hand-written notes of Respondent Millie Browndorf.

C. Copy of check #2228X (front and back).

D. Tropicana's Customer Deposit Receipt #295336

E. Transcript of Sworn Investigative Interview of Respondent Millie Browndorf conducted on September 28, 1987.

F. Transcript of Sworn Investigative Interview of Cage Shift Supervisor Tom Carter conducted on September 28, 1987.

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forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

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

1.23.89
DATE

Richard Murphy
RICHARD MURPHY, ALJ

Agency Receipt:

1/23/89
DATE

Marianne Farone
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 25 1989
DATE

Robert L. Lee
OFFICE OF ADMINISTRATIVE LAW

lh

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DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1	Antonio Chan's Application for Casino Credit at Tropicana (13 pages)
J-2	Counter Check #612721
J-3	Counter Check #612731
J-4	Counter Check #612778
J-5	Tropicana Redemption Receipt #150571
J-6	Counter Check #612795
J-7	Tropicana Redemption Receipt #150808
J-8	Tropicana Redemption Receipt #150814
J-9	Counter Check #613187
J-10	Tropicana Redemption Receipt #150979
J-11	Tropicana Cash Paid Out Slip, dated December 14, 1985, in the amount of $12,500
J-12	Tropicana Cash Paid Out Slip, dated December 14, 1985, in the amount of $8,500
J-13	Counter Check #670874
J-14	Counter Check #670877
J-15	Tropicana Redemption Receipt #190515
J-16	Counter Check #670917
J-17	Tropicana Cash Paid Out Slip, dated May 14, 1986, in the amount of $25,200 (front and back)
J-18	Tropicana Cash Paid Out Slip, dated August 17, 1986, in the amount of $12,800 (front and back)
J-19	Philippine Airlines ticket, dated June 7, 1986
J-20	Pan Am ticket, dated February 12, 1985
J-21	Counter Check #812225
J-22	Tropicana Redemption Receipt #221301
J-23	Tropicana Cash Paid Out Slip, dated August, 1986 in the amount of $16,800 (front and back

J-24 Tropicana Comp. System Posting Display for Antonio Chan (20 pages)

J-25 DGE Interview Report of Paul Bohrer

J-26 DGE Interview Report of Mark Armideo

J-27 DGE Interview Report of Robert James

J-28 Tropicana Cash Transaction Report, dated December 14, 1985

J-29 Tropicana Cash Transaction Report, dated May 14, 1986

J-30 Tropicana Cash Transaction Report, dated August 17, 1986

J-31 Tropicana Cash Transaction Report, dated August 24, 1986

J-32 DGE Interview Report of John Copriviza (2 pages)

J-33 Tropicana Input Player Ratings for Antonio Chan (7 pages)

J-34 Tropicana Memorandum from Sam Nonclerg to Cage Cashiers, dated October 9, 1986, with attached cage paid out policy (6 pages)

J-35 Tropicana Memorandum fron Ron Alcorn to Casino Cage Supervisors/Main Bank Cashiers, dated May 21, 1986, regarding "Paid-Out Policy" (2 pages)

J-36 DGE Interview Report of Natalie David

J-37 DGE Interview Report of Emil Russell

J-38 DGE Interview Report of Michael O'Neill

J-39 DGE Interview Report of Van Bryant

J-40 Transcript of sworn investigative interview of Robert James with attached Exhibits (30 pages)

J-41 Transcript of sworn investigative interview of Van Bryant with attached Exhibits (18 pages)

J-42 Transcript of sworn investigative interview of Mark Armideo with attached Exhibits (40 pages)

For respondent:

R-1 Executive summary of the recommendations by the New Jersey Division of Gaming Enforcement to amend the Casino Control Act, dated October 1968

R-2 Proposals for casino reform submitted by the Attorney General and Division of Gaming Enforcement

R-3 Memorandum of September 5, 1985, from James B. Perry, Vice President of Finance to the Executive Committee

R-4 Final Order of the Casino Control Commission in the matter of Petition #287204

R-5 Philadelphia Inquirer article of February 20, 1987

R-6 Investigative Report (not admitted)

R-7 Summary page of counter check and redemption transactions (not admitted)

For RS (James Sattazahn):

RS-1 Letter of August 26 from Richie Zappulla, Vice President, Casino Operations/Casino Manager, Trump's Castle

RS-2 Letter of August 26, 1988, from Larry McGuire, Shift Manager of Trump's Castle

RS-3 Letter of August 27 from Frank Baldwin, Assistant Casino Manager, Bally's Grand Casino/Hotel

RS-4 Letter of August 27 from Don Crocket, V.P./Casino Manager of Bally's Grand

RS-5 Letter of August 26 from Reginald D. Miller, Casino Shift Manager of the Showboat Hotel and Casino

RS-6 Letter of July 2 from Russell J. Miller of Margate, New Jersey

RS-7 Letter of June 20 from Bruce Einhorn, Senior Vice President for Casino Operations of the Showboat Hotel and Casino

RS-8 Letter of August 25 from Bobby Garvey, Executive Shift Manager of the Showboat Hotel and Casino

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-300
REGISTRATION NO. 21946-40
OAL DOCKET NO. CCC 3036-88
ORDER NO. 88-45-3

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	ORDER
v.		
REMBERTO ARROYO, JR.,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 16, 1988,

IT IS on this 16th day of February 1989, ORDERED that the initial decision is modified as follows:

> The ALJ's reference to the respondent's "inadvertent participation in a drug transaction" is disapproved. The respondent was convicted of knowingly engaging in a conspiracy to distribute a controlled dangerous substance. This determination of the Superior Court of New Jersey, made pursuant to the respondent's plea of guilty, is binding upon this tribunal under the doctrine of res judicata. The respondent may have been less involved in the conspiracy than were his two co-conspirators, but his conduct cannot fairly be described as "inadvertent."

IT IS FURTHER ORDERED that the complaint for revocation of the respondent's casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3036-88

AGENCY DKT. NO. 88-300

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

Petitioner,

v.

REMBERTO ARROYO, JR.,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Richard Goldstein, Esq., for the respondent

Record Closed: September 15, 1988 Decided: October 5, 1988

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on March 24, 1988, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on April 27, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 28, 1988, and at that time the parties agreed that the issues in this matter are:

1. Whether the respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1).

2. Whether the respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

3. Whether the respondent can demonstrate rehabilitation pursuant to N.J.S.A. 5:12-91d.

4. Whether the respondent meets the requirements for a waiver pursuant to N.J.S.A. 5:12-91e.

The hearing took place on September 15, 1988, at the Galloway Township Municipal Building in Absecon, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

On November 19, 1986, the respondent, a hairdresser, was asked by a friend, Gabe Rivera, to cut his hair. The respondent borrowed his roommate's car and went to Mr. Rivera's home. While the respondent was there, Mr. Rivera went to another room to speak to another visitor and to take a telephone call. After the haircut was completed, Mr. Rivera asked the respondent to drive him to the Shore Mall so that he could meet a person who was going to repay a debt. The respondent agreed since he was going to the Shore Mall to pick up a pair of shoes.

The respondent was curious as to why Mr. Rivera was meeting the person who owed him money at the Shore Mall. On the way to the mall he questioned Mr. Rivera about his plans. Mr. Rivera then told him that he planned to sell cocaine at the mall.

At that time, the respondent had known Mr. Rivera for five years, initially meeting him while they both worked at the Playboy Hotel and Casino. However, he denied knowing before this conversation on November 19, 1986, that Mr. Rivera was involved with narcotics. After Mr. Rivera told him why he was going to the mall, the respondent considered requesting that Mr. Rivera leave the car immediately; however, because of his friendship with Mr. Rivera and because he was going to the Shore Mall anyway, the respondent continued to the mall. The respondent left Mr. Rivera at the entrance to the auto department of the Sears store and told him that he did not want to have anything to do with the drug sale.

After dropping off Mr. Rivera, the respondent drove to another entrance of the Sears store and parked the car. As he was doing this, Andres Hidalgo drove up. The respondent recognized Mr. Hidalgo as a friend of Mr. Rivera. While they were talking in the parking lot, the police arrived and arrested both of them (P-1, P-2). Later, Mr. Rivera, Mr. Hidalgo and the respondent were indicted (P-3). In the indictment, Mr. Rivera was charged with the possession of cocaine, the possession of cocaine with intent to distribute, and the distribution of cocaine to an undercover agent; Mr. Hidalgo was charged with several counts of conspiracy; and the respondent was charged with one count of conspiracy to facilitate the commission of the crime of possession of a controlled dangerous substance (cocaine) with intent to distribute same, in a quantity of one ounce or more that includes at least 3.5 grams of pure free base, contrary to the provisions of N.J.S.A. 24:21-24 (P-3).

The respondent was represented by an attorney, and after plea bargaining, he pled guilty on March 6, 1987 to the conspiracy offense. At that time, the respondent was aware that if convicted after a trial, he could receive a sentence of up to 12 years in jail (R-1). For the offense the respondent was sentenced to 30 days in jail and probation for 18 months, and he was required to make a $30.00 payment to the Violent Crimes Compensation Board (P-3). The respondent paid the $30.00, spent 15 days in the Atlantic County Jail and will complete his probationary period on September 21, 1988.

According to the respondent, his only involvement in the matter was that of driving Mr. Rivera to the Shore Mall knowing that he intended to sell drugs there. This was confirmed by Mr. Rivera in his sworn statement to the police after his arrest, and by the fact that the police reports of the investigation, prior to November 19, 1986, do not mention Mr. Arroyo (R-6).

Since his guilty plea, the respondent has had no further contact with Mr. Rivera. The respondent has complied with the terms of his probation, which includes working at a full-time job and reporting once a month to a probation officer. According to the respondent, he has never personally taken or sold any cocaine during his life.

In addition to the 1986 incident, the respondent's criminal record reflects only one other arrest. On February 27, 1982, the respondent and Wadsworth Hamilton Campbell were arrested for theft by unlawful taking, a violation of N.J.S.A. 2C:20-3a. They were accused of taking personal property from another employee's locker at Bally's Park Place Hotel and Casino (P-4). The respondent stated that he was not involved in any theft and that Mr. Campbell had given him an empty wallet which he assumed belonged to Mr. Campbell. This matter was discharged when the complainant failed to appear in court.

The respondent started to work for the Playboy Hotel and Casino (Playboy) in 1982 and except for a short time in 1987, when there was a strike, he is still employed by that casino as a waiter (the Playboy became the Atlantis Hotel and Casino [Atlantis]). The respondent stated that he was suspended by Atlantis for three days for blowing a party horn during working hours on New Year's Eve. In addition, the records of Playboy-Atlantis show that between May 30, 1982 and June 22, 1987, the respondent was given ten written warnings regarding improper procedures or improper conduct (P-6).

During the break in employment with Atlantis, Mr. Arroyo applied for a job with Caesars Hotel and Casino. He partially filled out an application form for a position with Caesars and left blank the question relating to any criminal convictions (P-7).

On two separate occasions the respondent has worked for Resorts International Hotel and Casino (Resorts). The first time he worked for Resorts as a busboy and left that position for a better paying job with Playboy. On the second occasion, he was employed as a bar porter for approximately one year, however, he did not recall why he left that position. Resorts' records show that the respondent quit in 1981 without giving "due notice", and that when he was employed in 1982, the respondent was excessively late during one month and was apparently discharged because of an unauthorized leave (P-5).

CONCLUSIONS OF LAW

On behalf of the Division, Deputy Attorney General Nancy P. Scharff argued that the Division has shown a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1). Mr. Arroyo was convicted of a violation of conspiracy to distribute a controlled dangerous substance, a violation of N.J.S.A. 24:21-5, which is comparable under current law to a conviction for conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-5, which are listed as statutory disqualifiers. I agree with Ms. Scharff and I **CONCLUDE** that the Division has established a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1). Therefore, there is no need to consider whether the respondent's action is also inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

Since the Division has established a statutory disqualifier, it is now necessary to consider whether the respondent has proven his rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has demonstrated rehabilitation for purposes of retaining registration as a casino hotel employee:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offense or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the registrant when the offense or conduct was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of

additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

The evidence presented by the respondent does not address most of these criteria. On behalf of the respondent, Richard Goldstein, Esq., argued that Mr. Arroyo does not have to show rehabilitation since he was not guilty of any intentional criminal wrongdoing and had pled guilty only to avoid a trial. In the alternative, Mr. Goldstein argued that the respondent's degree of criminal culpability is minimal and therefore he does not have to present a substantial amount of evidence in order to prove rehabilitation. Mr. Goldstein argued that the respondent has shown rehabilitation since he has no other criminal convictions, has severed his friendship with Mr. Rivera, has been continually employed since his release from jail, and shortly will successfully complete his period of probation.

Ms. Scharff disagreed and argued that the conviction occurred just over a year ago and that insufficient time has elapsed for the respondent to show rehabilitation by clear and convincing evidence.

In prior cases involving rehabilitation, the Commission has placed emphasis on the nature of a person's position within the casino industry and has recognized that although the same statutory criteria are used to judge rehabilitation for registrants and licensed employees, the criteria are to be weighed differently depending on the nature and duties of the position. In this matter, the respondent is a waiter and therefore has no direct responsibility for any casino gambling activity. Also, Mr. Arroyo's conviction was based on his inadvertent participation in a drug transaction. In addition, although he does not have an outstanding work record in the casino industry, there is nothing in said record which adversely reflects on his rehabilitation. Therefore, I agree with Mr. Goldstein's argument and I **CONCLUDE** that the respondent has shown his rehabilitation by clear and convincing evidence, pursuant to N.J.S.A. 5:12-91d.

The last issue regarding a waiver pursuant to N.J.S.A. 5:12-91e, does not have to be considered in this matter since I have concluded that the respondent has demonstrated his rehabilitation.

DISPOSITION

I **ORDER** that the casino employee registration of Remberto Arroyo, Jr. not be revoked.

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

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

October 5, 1988
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-6-88
DATE

Marianne Farrow
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 11 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Egg Harbor Township Police Department Investigation Report regarding the arrest of Andres Hidalgo, Remberto Arroyo and Gabe Rivera; Egg Harbor Township Police Department Arrest Report regarding Remberto Arroyo; and the statement form signed by Remberto Arroyo

P-2 The complaint filed against Remberto Arroyo, dated November 19, 1986

P-3 The Indictment filed in the State of New Jersey v. Gabe Rivera, Andres Hidalgo and Remberto Arroyo

P-4 New Jersey State Police Investigation Report regarding an incident occurring at the Bally's Park Place Hotel and Casino and involving Wadsworth Hamilton Campbell and Remberto Arroyo

P-5 Resorts International Hotel Casino Employee Status Notification form relating to Remberto Arroyo

P-6 Playboy Hotel and Casino/Atlantis Casino Hotel files regarding employee conferences and warning notices issued to Remberto Arroyo

P-7 Caesars Atlantic City Employment Application filled out by Remberto Arroyo, dated September 23, 1987

For the Respondent:

R-1 Plea Agreement regarding the Indictment filed against Remberto Arroyo

R-2 Marked for identification only

R-3 Marked for identification only

R-4 Marked for identification only

R-5 Marked for identification only

R-6 The Atlantic County Prosecutors Office Detective Division's file regarding a narcotics surveillance

WITNESSES:

For the Petitioner:

None

For the Respondent:

Remberto Arroyo, Jr.

STATE OF NEW JERSEY
CASINO CONTROL CONTROL COMMISSION
DOCKET NO. 88-344
OAL DOCKET NO. CCC 04730-88
ORDER NO. 89-4-16

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

Complainant,

v.

BALLY'S PARK PLACE, INC.
t/a BALLY'S PARK PLACE CASINO HOTEL
AND GLORIA EDWARDS

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge, incorporating the Stipulation of Facts and Settlement Agreement, having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 25, 1989; and the parties having agreed to modify the settlement agreement to allocate the $5,000 civil penalty equally between the two violations,

IT IS on this 1st day of May 1989, ORDERED that the initial decision-settlement is adopted subject to the following modification:

> The $5,000 civil penalty, recommended by the Administrative Law Judge, is to be allocated equally between the N.J.S.A. 5:12-101(b) violation and the N.J.S.A. 5:12-96(e) violation.

IT IS FURTHER ORDERED that Bally's Park Place, Inc. t/a Bally's Park Place Casino Hotel pay a civil penalty in the amount of $2,500 for its admitted violation of N.J.S.A. 5:12-101(b), and $2,500 for its admitted violation of N.J.S.A. 5:12-96(e), due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 4730-88
AGENCY DKT. NO. 88-344

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
BALLY'S PARK PLACE, INC.,
t/a BALLY'S PARK PLACE CASINO HOTEL,
AND GLORIA EDWARDS,
Respondents.

Christopher Pitts, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Shelley C. Waxman, Esq., for respondents

Record Closed: November 29, 1988 Decided: December 12, 1988

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

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The parties have agreed to a settlement and have prepared an executed settlement agreement indicating the terms thereof, which is attached and fully incorporated herein.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and it is consistent with the law.

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

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

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

December 12, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

December 13, 1988
DATE

Dolores A. Hart
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 15 1988
DATE

Ronald L. Parks, Jr.
OFFICE OF ADMINISTRATIVE LAW

jz

EXHIBITS

None

WITNESSES

None

CARY EDWARDS
Attorney General of New Jersey
Attorney for Complainant
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: Christopher Pitts
Deputy Attorney General

Shelley Waxman, Esquire
Assistant Counsel
Bally's Park Place, Inc.
Park Place and Boardwalk
Atlantic City, New Jersey 08401
Attorney for Respondents

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 04730-88
CCC DOCKET NO. 88-344

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. BALLY'S PARK PLACE, INC., t/a BALLY'S PARK PLACE CASINO HOTEL; and GLORIA EDWARDS, Casino Cage Shift Manager, Respondents.	STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

The matters involved having been discussed by and between the parties involved, Cary Edwards, Attorney General of New Jersey, attorney for complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Christopher J. Pitts, Deputy Attorney General, and Shelley Waxman, Esquire,

Assistant Counsel, Bally's Park Place Casino Hotel, Inc., attorney for Respondents Bally's Park Place, Inc. and Gloria Edwards and certain matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

1. Respondent, Bally's Park Place, Inc., t/a Bally's Casino Hotel (hereinafter "Bally"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Park Place and the Boardwalk in the City of Atlantic City, County of Atlantic, State of New Jersey.

2. Bally is now the holder of a casino license issued by the Casino Control Commission (hereinafter "Commission") authorizing Bally to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Bally effective December 29, 1980, and most recently renewed on September 14, 1988. Bally has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Bally is the holder of, and operates pursuant to, a Certificate of Operation effective December 29, 1979, at which time Bally was the holder of a temporary casino permit. Bally has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles Bally to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Respondent Gloria Edwards holds a valid casino key employee license, #1862-11, which was initially issued by the Commission in June, 1985 and most recently renewed on August 5, 1987.

5. Respondent Gloria Edwards is now and at all times referenced herein has been employed by Bally in the capacity of Casino Cage Shift Manager. Attached hereto and made a part hereof as Exhibit A is a copy of Bally's job description for the position of Casino Cage Shift Manager.

6. On May 26, 1987 at approximately 9:35 p.m. a person by the name of Joseph Tominaro presented to Bally's Casino Cage Cashier Theresa Bove, casino employee license #66899-21, a personal check which was stamped with the words "Certified Check".

7. The check presented by Joseph Tominaro to Ms. Bove at approximately 9:35 p.m. on May 26, 1987, as referred to in paragraph 6 of this Stipulation of Facts and Settlement Agreement (hereinafter "Stipulation"), supra, had the number 151 printed in the upper right hand corner of the check. Handwritten directly to the left of the printed numbers was the number "2". In the upper left hand corner of the check (hereinafter "check #2151") the name "Joseph Tominaro" was printed while an address, 1867 West 10th Street, Brooklyn, New York 11223, was handwritten directly beneath the printed name. Adjacent to the printed name "Joseph Tominaro" was a telephone number, (718)372-8623. Said telephone number was handwritten.

8. Check #2151 presented by Joseph Tominaro to Ms. Bove at approximately 9:35 p.m. on May 26, 1987, as referred to in

paragraph 6 supra, was made payable to "Bally's Casino" in the amount of $5,000 and was dated May 26, 1987. Said check was drawn on account #3282061336 and listed The Bowery Savings Bank, 2154 86th Street, Brooklyn, New York, as the payor bank. A copy of check #2151 is attached hereto as Exhibit B and made a part hereof.

9. Upon presenting check #2151 to Ms. Bove, Joseph Tominaro advised Ms. Bove that he had telephoned Bally's Casino Cage personnel earlier that day to provide information concerning the check. Ms. Bove then presented check #2151 to Casino Cage Shift Manager Gloria Edwards for the purpose of approving the acceptance of said check.

10. Respondent Gloria Edwards did not independently determine the validity of check #2151 prior to the acceptance thereof. Rather, Ms. Edwards has represented that upon being presented with check #2151 by Ms. Bove, she reviewed cage documentation regarding the verification of said check that had been prepared during the day shift on May 26, 1987, by another Bally employee, the identity of whom Ms. Edwards cannot recall.

11. After reviewing the cage documentation regarding the verification of check #2151, as referred to in paragraph 10 supra, Respondent Edwards represents that she authorized the acceptance of check #2151. Said authorization is signified by the initials "G.E." placed in the upper right hand portion of check #2151 by Respondent Edwards.

12. Based upon Respondent Edwards' authorization, as described in paragraph 11 supra, check #2151 was accepted by Cage Cashier Theresa Bove and the funds represented by check #2151 were

placed on deposit with Bally. Said deposit was made at 9:38 p.m. on May 26, 1987 and was in the amount of $5,000. Bally's Customer Deposit Voucher #312268 documents this transaction. A copy of Customer Deposit Voucher #312268 is attached hereto as Exhibit C and made a part hereof.

13. During the period from 9:45 p.m. on May 26, 1987, until 12:43 a.m. on May 27, 1987, Joseph Tominaro withdrew the funds which are the subject of paragraph 12 supra, in five (5) separate $1,000 increments.

14. On or about May 27, 1987, check #2151 was deposited by Bally in its depository bank account. Said check was subsequently returned unpaid to Bally on or about June 5, 1987.

15. Shortly after the return of check #2151 unpaid from Bally's depository bank on or about June 5, 1987, Bally's notified the Division of the fraudulently presented check and criminal and regulatory investigations commenced.

16. Information obtained by the Division from representatives of the Bowery Savings Bank revealed that check #2151, drawn on the account of Joseph Tominaro, was not, in fact, certified for payment by the Bowery Savings Bank.

17. Information obtained by the Division from representatives of the Bowery Savings Bank revealed that the account upon which check #2151 was drawn, account #3282061336, had been closed in September of 1986.

18. During the course of the Division's investigation in the instant matter, the Division made several requests of Respondents Bally and Gloria Edwards to locate and produce the cage

documentation regarding the verification of check #2151 as described in paragraph 10, supra. Upon being so requested, Respondents Bally and Gloria Edwards were unable to locate or produce said documentation.

19. Pursuant to internal policies of Respondent Bally, approval for the acceptance of cash equivalents presented by gaming patrons and the responsibility to insure that such instruments have been verified prior to acceptance is the responsibility of the general cashier supervisors, more specifically, Assistant Casino Cage Shift Supervisors or above.

20. Respondent Gloria Edwards, in her capacity as Casino Cage Shift Manager, was responsible for determining the validity of check #2151 prior to its acceptance by Respondent Bally's casino cage on May 26, 1987.

21. On May 26, 1987, Respondent Gloria Edwards, in her capacity as Casino Cage Shift Manager, authorized the acceptance of check #2151. Based upon said authorization, check #2151 was accepted by Cage Cashier Theresa Rove on May 26, 1987.

22. The Division represents that had Respondent Gloria Edwards, or any other casino cage representative of Bally, placed a direct inquiry with the Bowery Savings Bank prior to the acceptance of check #2151 on May 26, 1987, Respondent Bally would have learned of the worthless nature of said check.

23. At all times relevant hereto, Respondent Gloria Edwards was acting within the scope and in furtherance of her employment by and agency of Respondent Bally.

24. By failing to contact the Bowery Savings Bank prior to the acceptance of check #2151, Respondents Bally's Park Place, Inc. and Gloria Edwards failed to take sufficient steps to perform the necessary verification to determine the validity of check #2151 prior to its acceptance on May 26, 1987, in violation of N.J.A.C. 19:45-1.25(e).

25. By accepting check #2151 as a cash equivalent when, in fact, said check was not a cash equivalent, Respondents Bally's Park Place, Inc. and Gloria Edwards violated N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(e).

26. By failing to locate or produce the cage documentation which is the subject of paragraph 10, supra, Respondent Bally has failed to maintain all books, records or documents pertaining to the operation of its casino and approved hotel on the site of the approved hotel building for a period of seven years, in violation of N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)2.

27. By failing to locate or produce the cage documentation which is the subject of paragraph 10, supra, Respondent Bally has failed to hold those documents immediately available for inspection by agents of the Commission and Division during all hours of operation, in violation of N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)3.

28. During the course of the Division's investigation in the instant matter, the Division requested that Respondent Bally produce documentation regarding telephone calls placed from the casino cage during the month of May 1987.

29. Specifically, the Division requested that Respondent Bally produce copies of the telephone charges for the month of May 1987 in order to determine if the bank upon which check #2151 was drawn had been contacted by employees of Bally on May 26, 1987 in an attempt to determine the validity said check. Upon being so requested, Respondent Bally was unable to locate or produce the records which reflect telephone charges from the casino cage for the month of May, 1987.

30. Subsequent to the filing of the Division's Complaint in this matter, Respondent Bally instituted procedures designed to ensure the proper maintenance and retention of telephone charge records. Said procedures will ensure that telephone charge records will be kept available for agents of the Commission and Division pursuant to N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)(2) and (3).

31. As part of the Division's investigation in the instant matter, sworn investigative interviews of Respondent Gloria Edwards and of Bally's Cage Cashier Terry Bove were conducted on September 22, 1987. Transcripts of the sworn investigative interviews of Respondent Gloria Edwards and Cage Cashier Terry Bove are attached hereto and marked as Exhibits D and E respectively.

SETTLEMENT

WHERFAS, the parties have endeavored to submit to the Commission a detailed submission of all of the material and relevant facts pertinent to the allegations contained in Complaint 88-344. Additionally, the parties submit for purposes of this

Stipulation of Facts various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, Respondents Bally's Park Place, Inc. and Gloria Edwards acknowledge failing to take sufficient steps to perform the necessary verification to determine the validity of check #2151 prior to its acceptance on May 26, 1987 in violation of N.J.A.C. 19:45-1.25(e), and

WHEREAS, Respondents Bally's Park Place, Inc. and Gloria Edwards acknowledge accepting check #2151 as a cash equivalent when, in fact, said check was not a cash equivalent, in violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(e), and

WHEREAS, Respondent Bally's Park Place, Inc. acknowledges its failure to locate or produce documentation regarding the verification of check #2151, in violation of N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)(2) and (3), and

WHEREAS, Complainant, Division of Gaming Enforcement, agrees to the dismissal, without prejudice, of the allegations contained in Count III of the Division's Complaint based upon the facts set forth at paragraph 30 of this Stipulation of Facts and Settlement Agreement, and

WHEREAS, all of the allegations contained in the Division's Complaint in this matter are hereby resolved.

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

A. Respondent Gloria Edwards agrees to the issuance of a letter of reprimand pursuant to N.J.S.A.

5:12-129(8) for the aforementioned violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(e) in full and final settlement of the allegations set forth in Count I of the Division's Complaint.

B. Respondent Bally's Park Place, Inc. agrees to pay the sum of $5,000 to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.S.A. 5:12-96(e), N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.8(a)(2) and (3) and N.J.A.C. 19:45-1.25(e) in full and final settlement of the allegations set forth in Counts I and II of the Division's Complaint.

Dated: 11/29/88

By: _____
Christopher Pitts
Deputy Attorney General
Attorney for Complainant
State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement

Dated: 11/29/88

By: _____
Shelley Waxman, Esquire
Assistant Counsel
Bally's Park Place, Inc.
Attorney for Respondents
Bally's Park Place, Inc.
and Gloria Edwards

110988/34

TABLE OF EXHIBITS

A	-	Bally's job description for the position of Casino Cage Shift Manager.
B	-	Check #2151, (front and back) after being returned from the Bowery Savings Bank.
C	-	Bally's Customer Deposit Receipt #312268.
D	-	Transcript of Sworn Investigative Interview of Gloria Edwards, conducted on September 22, 1987.
E	-	Transcript of Sworn Investigative Interview of Terry Bove, conducted on September 22, 1987.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-229
OAL DOCKET NO. CCC 6068-88
(ON REMAND CCC 1198-88
REGISTRATION NO. 30539-40
ORDER NO. 89-9-12

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Complainant, :
v. :
DOROTHEA P. BARKER, :
Respondent. :

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 14th day of April 1989, ORDERED that the initial decision is modified as follows:

> to disavow the ALJ's statement "[c]onsidering the public apathy concerning the recreational use of small amounts of marijuana...." Init. dec. at 4. We do not accept this statement as the general public's sentiment in this area. Moreover, this case does not deal with the recreational use of marijuana as the ALJ's statement suggests. The respondent's conviction was for possession of marijuana with intent to distribute.

ORDER NO. 89-9-12

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6068-88
(ON REMAND CCC 1198-88)
AGENCY DKT. NO. 88-229

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
DOROTHEA P. BARKER,
Respondent.

Charles Kimmel, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Dorothea P. Barker, respondent, pro se

Record Closed: December 8, 1988 Decided: January 13, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Respondent, Dorothea P. Barker, is a casino hotel employee registrant with the Casino Control Commission (Commission). On June 19, 1987, she was convicted of possession of a controlled dangerous substance (marijuana) over one ounce, with intent to distribute, contrary to N.J.S.A. 24:21-19(a)(1). As a result, the Division of Gaming Enforcement (Division) filed a complaint with the Commission on February 4, 1988 seeking to revoke her casino employee registration. When the offense was committed, N.J.S.A. 24:21-19(a)(1) was listed as a disqualifying criterion for casino

licensure pursuant to N.J.S.A. 5:12-86c(1). Section 91b of the Casino Control Act (Act) made revocation a possible sanction for registrants if convicted for an 86c(1) disqualifier. Since then drug offenses have been recodified at N.J.S.A. 2C:35-1 et seq. The Act has been amended accordingly and N.J.S.A. 2C:35-5 is the equivalent disqualification offense to N.J.S.A. 24:21-19(a)(1).

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

At a prehearing conference on October 12, 1988, the issues to be addressed at the plenary hearing were identified as whether the respondent was convicted of a statutory disqualifier listed in N.J.S.A. 5:12-86c(1), the distribution of a controlled dangerous substance, and if so, could she affirmatively show that she was rehabilitated according to the guidelines set forth in N.J.S.A. 5:12-91d. A plenary hearing was conducted on December 8, 1988.

DISQUALIFICATION

The respondent admitted that she possessed more than one ounce of marijuana with the intent to distribute it and was convicted on June 19, 1987 of a violation of N.J.S.A. 24:21-19(a)(1). The facts recited by the respondent constitute a violation of N.J.S.A. 2C:35-5 in the third degree.

I **CONCLUDE** that the respondent may be disqualified from casino employee registration unless saved from disqualification by an affirmative showing that she is rehabilitated from her crime pursuant to N.J.S.A. 5:12-91d.

REHABILITATION

The Act permits an otherwise disqualified applicant for employee registration to avoid the onus of disqualification by affirmatively showing that she is rehabilitated. N.J.S.A 5:12-91d. The rehabilitation statute requires consideration of the following eight factors: (1) the nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or

conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

I **FIND** that:

(1) The applicant is employed as a guest room attendant in a casino hotel. She expects to become a supervisor in that department after she enrolls in and completes the "Upward Mobility Program" offered by her employer.

(2) This was a drug offense in the third degree. The sentencing judge determined that respondent's conduct neither caused nor threatened serious harm.

(3) Lionel Gettings, respondent's paramour, operated a small marijuana distribution operation from respondent's home, selling small bags of less than an ounce of marijuana. He sold these in order to support his own habit of smoking marijuana. Respondent assisted him in this and would often sell the marijuana to persons who came to the door looking for a buy. She insisted that she did not sell the marijuana at the casino. She acknowledged that she needed the money to "bail her out of a tight spot."

(4) Respondent was arrested on February 14, 1987.

(5) Respondent was 36 years old when she was arrested.

(6) This is respondent's first arrest and conviction. She acknowledged however that she did sell marijuana for about a year prior to her arrest.

(7) There was no evidence offered at the hearing to indicate that social conditions may have contributed to the offense.

(8) Respondent is on 3 years probation and is currently paying her $1000 fine obligation. She has a letter from a supervisor indicating that she is a good, reliable employee.

Because respondent has not completed payments on her fine and because she must still serve one more year on probation, she cannot be considered rehabilitated from her crime. Until she has completed her sentence she is not even permitted to vote, N.J.S.A. 19:4-1(8).

ADDITIONAL FACTORS MERITING CONSIDERATION

Until 1980 when respondent was employed in the casino industry she was a recipient of Aid to Families With Dependent Children. One of her children, who is now 20 years old, is emancipated. Respondent has three unemancipated children at home; twin boys 16 years old and a four year old daughter. The four year old's father, Lionel Gettings, is responsible for child care when respondent is at work. Respondent has worked continuously in the casino industry since 1980 as a room attendant. She works 8:45 a.m. to 4:45 p.m. five and often six days per week. Her supervisor is pleased with her work and respondent anticipates a promotion to a supervisory position.

Respondent argued that she will not be involved with marijuana again. She stated that she did not want to go to jail and that she did not want to lose her registration.

Lionel Gettings also testified. In addition to his confession referred to in the third paragraph of the section entitled "Rehabilitation", above, he too, indicated that there would be no more sale or use of marijuana by either of them. He simply and truly said "We have too much to lose."

Revocation in this case would be onerous since this crime did not occur on casino property. Considering the public apathy concerning the recreational use of small amounts of marijuana together with the respondent's minor role in the

provision of housekeeping services in a casino hotel, her continued employment would not undermine the public's confidence or trust in the casino industry.

LAW AND DISCUSSION

The provisions of section 91b provide wide discretion to the Commission. It ..."may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C.5:12-86)."

This discretion has been approved by the Appellate Division. *State v. Wynette Harris*, Docket No. A-3774-81T2 (unpublished opinion decided March 1, 1983).

Nevertheless, the Commission has determined from its review of section 64 of the Casino Control Act that "...the proper response to a disqualifying offense by an unrehabilitated registrant is revocation..." *State v. Wynette Harris*, OAL DKT. NO. CCC 3038-81, Final Commission Decision Decided June 29, 1983, p.13. The Commission Decision on page 13 also quotes section 64 in pertinent part as follows:

> The commission shall assure that licenses, certificates, or permits shall not be issued to nor held by...unqualified or disqualified persons or unsuitable persons...For the purposes of this section, "unqualified person," "disqualified person," or "unsuitable person" shall mean any person who is found by the commission to be disqualified pursuant to the criteria set forth in section 86c., e., f., g., and h.... [emphasis added by Commission]

Persons who are disqualified from registration are barred from reapplication to the Casino Control Commission for registration for a period of 5 years. N.J.A.C. 19:41-8.8(a).

The Commission, in the *Wynette Harris* decision, supra p.2., illuminates the only escape from that provision; it notes that the Chairman can grant permission to make an early reapplication if he finds" "...that there exists extraordinary facts and circumstances warranting early reapplication." N.J.A.C. 19:41-8.8(g)."

I therefore **CONCLUDE** that the respondent is disqualified from registration because she has been convicted of a disqualifying offense pursuant to section 86c(1)

and 91b of the Act. I also **CONCLUDE** that she is not rehabilitated pursuant to section 91d of the Act.

I **ORDER** that the registration of respondent Dorothea P. Barker be **REVOKED**.

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

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

January 13, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1/19/89
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 19 1989
DATE

Ronald C. Tanker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

Dorothea P. Barker
Lionel Gettings

EXHIBIT LIST

For the Petitioner:

P-1 Indictment and Judgment of Conviction
P-2 Atlantic City Police Report

For the Respondent:

R-1 Letter of Recommendation, dated July 26, 1988, from Patricia Toomey, Trump Castle, Executive Housekeeper

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-139
LICENSE NO. 50956-21
OAL DOCKET NO. CCC 8829-89
ORDER NO. 89-25-16

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF BRUCE R. BASKOW

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 21, 1989,

IT IS on this 23rd day of June 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly PW
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8829-88
AGENCY DKT. NO. 89-EA-139

BRUCE R. BASKOW,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Bruce R. Baskow, petitioner, pro se

James J. Armstrong, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 20, 1989 Decided: May 23, 1989

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission on September 2, 1988, objecting to the renewal of the casino employee license of the petitioner, Bruce R. Baskow. The petitioner requested a hearing and the matter was transmitted on December 5, 1988, to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on February 16, 1989, and at that time the parties agreed that the issues in this matter are:

1. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4 (theft by deception).*

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

3. Whether petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing took place on April 20, 1989, in the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

During its investigation regarding the petitioner's application for the renewal of his casino employee license, the Division found that the petitioner had received excessive unemployment benefits for several weeks during 1984-85 while employed as a part-time craps dealer by Caesars Boardwalk Regency Hotel and Casino (Caesars) (R-3, R-4, R-5). After a hearing, the Division of Unemployment and Disability Insurance, State Department of Labor (UDI Division), determined that the amount of the overpayment was $873 (R-6, R-7, R-8, R-9). A judgment was filed against the petitioner by the UDI Division on August 1, 1985, in the amount of $1,091.25 ($873 plus a penalty of $218.25) (R-2, R-8). With the assessment of interest, the petitioner had to repay the UDI Division the amount of $1,240.49.

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* There is a typographical error in the Division's September 2, 1988 letter as to the citation for theft by deception. The correct citation is N.J.S.A. 2C:20-4.

As of the date of the Division's September 2, 1988 letter to the Casino Control Commission, the petitioner had repaid $851.25 and still owed a balance of $389.24 (R-10). Prior to the hearing in this matter, the petitioner paid off the remaining amount due to the UDI Division (R-11).

According to the petitioner, he had been advised that he was entitled to unemployment benefits while he held the part-time position with Caesars. The petitioner stated that every week he gave the UDI Division his pay stub with a salary verification form given to him by Caesars' financial office, and the UDI Division issued him a check. The record of the UDI Division hearing appears to confirm that the petitioner provided the UDI Division with his pay stubs (R-7). According to the petitioner, he was not aware of the procedure used by the UDI Division to calculate his benefits and he was not aware that he had received any overpayments until he received a formal notice from the UDI Division.

The petitioner stated that it took him a while to pay the amount of the judgment since he had a substantial number of other debts as well as additional expenses due to his mother's illness (R-1).

Since 1984-85, the petitioner has taken several casino gaming courses in order to qualify as a dealer in blackjack, baccarat and mini-baccarat and he is now licensed as a dealer in four games and as a floorperson in two games.

The petitioner is 33 years old and he has been employed by Caesars since May 2, 1984. The petitioner stated that his casino employee license is very important to him and that he would like to continue working for the casino, especially since he will soon be a father. The petitioner stated that he is not married since his girlfriend also works for Caesars and the casino has a rule prohibiting married couples from both working there. However, the petitioner indicated that he plans to marry his girlfriend sometime in the future.

On behalf of the petitioner, Bruce G. Coffas, a supervisor employed by Caesars, stated that the petitioner's work performance has been satisfactory, that his courteous manner to customers is highly commendable and that he has a positive attitude to his job which makes him a valued employee (P-1).

I **FIND** the facts as stated above are not in dispute.

CONCLUSIONS OF LAW

Based on the facts presented, Mr. Armstrong argued that the petitioner misrepresented his part-time wages to the UDI Division, resulting in an overpayment of unemployment benefits. Although no criminal action was taken against the petitioner, Mr. Armstrong argued that the petitioner's actions are analogous to theft by deception, in excess of $500, a violation of N.J.S.A. 2C:20-4, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), even though no criminal action was initiated against the petitioner, as permitted by N.J.S.A. 5:12-86g.

Further, Mr. Armstrong argued that because of the overpayment of unemployment benefits, the petitioner cannot demonstrate his good character, honesty and integrity as required for the continuation of his casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

It is Mr. Baskow's position that he gave the UDI Division all the information it requested and that he never misrepresented his salary from Caesars. According to Mr. Baskow, the miscalculation of his benefits was made by the UDI Division and was probably due to the fact that Caesars had a different pay period than that used by the UDI Division for its unemployment benefits payments. However, Mr. Baskow reiterated that he was not aware of how the UDI Division calculated his benefits or that he received overpayments until he received the notice from the UDI Division.

Having reviewed the facts and the arguments of the parties, I **CONCLUDE** that the Division has not shown that the overpayment of unemployment benefits to the petitioner was due to any misrepresentation or deception by him. In order to prove a violation of N.J.S.A. 2C:20-4, it is necessary to show a conscious interest to cheat or defraud, State v. Moore, 158 N.J. Super. 68 (App. Div. 1978); State v. Graves, 60 N.J. 441 (1972). In this case, the Division has not shown a mens rea. There was no proof that the petitioner concealed or misrepresented his earnings to the UDI Division or that he knowingly accepted more money than he was entitled to pursuant to the law governing unemployment benefits.

Since the Division has not shown a statutory disqualification, it is not necessary to consider the issue of rehabilitation. Further, since the only negative information presented by the Division relates to the overpayment of unemployment benefits, I **CONCLUDE** that the petitioner has shown that he possesses the requisite good character, honesty and integrity necessary for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the casino employee license of Bruce R. Baskow be renewed.

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

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

May 23, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

5/24/89
DATE

Marjorie Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

May 25, 1989
DATE

Jayne LaVecchia/KS
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Letter from Bruce G. Coffas, dated February 9, 1989

For the Respondent:

R-1 Credit profile of Bruce Baskow prepared by the Credit Bureau Associates

R-2 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Clerk of the New Jersey Superior Court

R-3 Notice from the Hammonton Regional Office of the Division of Unemployment and Disability Insurance to the Central Investigating Unit, Bureau of Benefit Payment Control of the Division of Unemployment and Disability Insurance regarding the unemployment benefits paid to Mr. Baskow

R-4 Record of the Division of Unemployment and Disability Insurance showing the amount of monies paid to Bruce R. Baskow

R-5 Ledger sheet of the Division of Unemployment and Disability Insurance showing the dates that Mr. Baskow collected benefits between November 3, 1984 and January 25, 1985

R-6 Notice of hearing issued to Bruce Baskow by the Division of Unemployment and Disability Insurance, dated February 26, 1985

R-7 Record of the hearing before the Division of Unemployment and Disability Insurance, dated March 13, 1985

R-8 Determination and demand for refund of unemployment benefits issued to Bruce R. Baskow by the Division of Unemployment and Disability Insurance, dated April 17, 1985

R-9 Schedule showing the overpayment of unemployment benefits made to Bruce R. Baskow

R-10 A computer printout from the Division of Unemployment and Disability Insurance summarizing the overpayments made to Bruce R. Baskow and the amount of monies he had repaid

R-11 A computer printout from the Division of Unemployment and Disability Insurance showing that Mr. Baskow had satisfied the judgment

WITNESSES:

For the Petitioner:

Bruce R. Baskow

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-256 and 89-CSI-1
APPLICATION NO. 2707-70
VENDOR I.D. NO. 20420
OAL DOCKET NOS. CCC 1445-87 and 6234-88
ORDER NO. 89-14-18

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

Complainant,

v. ORDER

BAYSHORE, REBAR, INC. AND JOSEPH N. MERLINO

Respondents,

AND

APPLICATION OF BAYSHORE REBAR, INC. FOR A CASINO SERVICE INDUSTRY LICENSE.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 5, 1989,

IT IS on this 10th day of April 1989, ORDERED that the initial decision is modified as follows:

> to find, for essentially the reasons cited by the ALJ as to the company, that the qualifiers of Bayshore Rebar, Inc., Joseph N. Merlino and Phyllis Mistie Merlino, are disqualified pursuant to N.J.S.A. 5:12-86(f).

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that, except as otherwise provided herein, Bayshore Rebar Inc. and its qualifiers, Joseph N. Merlino and Phyllis Mistie Merlino, are prohibited from conducting any business, directly or indirectly with, or from supplying any goods or services to, any casino licensee or applicant or to any person acting on behalf of a casino licensee or applicant until further order of this Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Bayshore Rebar, Inc. and any casino licensee or applicant or employee or agent acting on behalf of a casino licensee or applicant be terminated within fifteen (15) days of the date of this order; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 1445-87 and
CCC 6234-88
AGENCY DKT. NOS. 87-256 and
89-CSI-1
(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
BAYSHORE REBAR, INC./
JOSEPH N. MERLINO,
Respondent,
and

IN THE MATTER OF THE APPLICATION
OF BAYSHORE REBAR, INC., FOR A
CASINO SERVICE INDUSTRY LICENSE

Stephen J. Cirillo, Deputy Attorney General, and **Julia McClure,** Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Francis J. Hartman, Esq., and **Charles H. Nugent, Jr.,** Esq., for respondent

Record Closed: November 21, 1988 Decided: December 20, 1988

New Jersey Is An Equal Opportunity Employer

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE

At issue is whether Bayshore Rebar, Inc., a reinforced concrete construction ("rebar") company operating primarily in Atlantic City, is disqualified under the Casino Control Act, L. 1977, c. 110; N.J.S.A. 5:12-1 et seq., from doing business with casino applicants and licensees because of the allegedly inimical association of its officers with a member of organized crime contrary to N.J.S.A. 5:12-86f, and whether it should be denied a license as a casino service industry pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.1 et seq. Both sides see this as a case of family ties: the Division of Gaming Enforcement (Division) alleges that the respondent has an inimical association with the crime family of Nicodemo Scarfo through one of its members, Lawrence Merlino, a/k/a Lawrence "Yogi" Merlino, who is the father of Bayshore's vice-president and former president as well as ex-husband of its current president; Bayshore Rebar, Inc. (Bayshore), claims that its only association with Lawrence Merlino is purely incidental to constitutionally protected family bonds formed through blood and marriage and that these alone may not provide a basis for disqualification or denial of a license under the Casino Control Act and Commission regulations.

PROCEDURAL HISTORY

The Division filed its initial complaint in this matter with the Casino Control Commission (Commission) on January 6, 1987, alleging various connections between Bayshore and its officers and owners and Lawrence Merlino, an admitted career criminal offender and a member of a career offender cartel headed by Nicodemo Scarfo. Joseph Merlino, former president of Bayshore, requested a hearing on February 11, 1987, and the matter was transmitted to the Office of Administrative Law on March 5, 1987, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The Division filed an amended complaint with the Commission on May 6, 1987, seeking to disqualify respondent Joseph N. Merlino from vendor registration under N.J.S.A. 5:12-104b because of his indictment on March 17, 1987, in Atlantic County on charges of aggravated assault, aggravated assault with a deadly weapon, and possession of a deadly weapon for unlawful

purposes. These criminal charges are still pending. The parties initially agreed to hold proceedings on the amended complaint in abeyance pending resolution of the criminal charges, but, as these charges were not rapidly resolved, it was determined to be more advisable to proceed to hearing on the allegations of the original complaint, and a prehearing to this end was held on November 17, 1987, with a prehearing order issued the next day. Decision on the unrelated criminal charges was deferred, pursuant to N.J.S.A. 5:12-86d, during the pendency of that charge. The hearing on the original complaint was scheduled for January 7, 1988, but this date was adjourned at the respondent's request due to the unavailability of counsel. The hearing was conducted on March 14, March 29 and March 31, 1988. After the completion of the hearing, additional documentation was submitted by respondent on April 7, 1988, with a ten-day reply period allowed to the Division. Before expiration of the time period for submission of an initial decision, the Division advised that it intended to move to reopen and supplement the record by submission of a sworn affidavit by Thomas A. DelGiorno. Bayshore filed a letter brief in opposition on July 5, 1988. On July 22, 1988, the record was reopened and the Division was ordered to produce Thomas A. DelGiorno for testimony; the respondent was directed to have Lawrence Merlino testify. Because of a pending federal criminal matter in which both men were involved, this could not be arranged and it was determined, on August 19, 1988, to admit the proposed affidavit from Thomas DelGiorno. Bayshore was also given an opportunity to submit an opposing affidavit from Lawrence Merlino, and did so.

On July 29, 1988, Bayshore applied to the Commission for licensure as a casino service industry pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3 et seq. The Division objected and argued that the applicant was disqualified on the grounds of its association with Lawrence Merlino, as well as the indictment of Joseph N. Merlino and by what the Division characterizes as misrepresentations by the applicant's principals in the course of the hearing in this matter. The matter of the application was transmitted to the Office of Administrative Law for hearing as a contested case with a request that it be consolidated with the pending matter in OAL DKT. CCC 1445-87. Consolidation was granted and the parties rested on the evidence introduced in the previously-filed casino control matter, which had been heard in March.

On September 7, 1988, Bayshore submitted an affidavit by Lawrence Merlino, responding to that previously submitted by Thomas DelGiorno. On September 21, 1988, the Division submitted an affidavit of Division Agent Barbara Friese and excerpts from reports of the Pennsylvania Crime Commission. On November 4, 1988, Bayshore forwarded sections of a transcript from a trial in United States District Court, Eastern District of Pennsylvania, entitled United States of America v. Nicodemo Scarfo, et al; in which the testimony of Thomas DelGiorno as to Bayshore and Lawrence Merlino was featured. The Division submitted a responsive argument on November 21, 1988, and the record as to the consolidated matter was closed on that date. The matter of the indictment pending against Joseph Merlino remains to be determined through criminal proceedings and is not dealt with in this decision.

FINDINGS OF FACT

The following material facts are not in dispute. Bayshore stipulated that Lawrence Merlino is a career criminal offender within the meaning of N.J.S.A. 5:12-86f and N.J.A.C. 19:48-1.1, as well as an associate of career criminal offenders and a member of a career criminal offender cartel. Specifically, Lawrence Merlino is an associate of Nicodemo Scarfo, the acknowledged head of an organized crime family operating out of Philadelphia in southern New Jersey and the Atlantic City area. Official notice is taken that, on November 19, 1988, Lawrence Merlino was convicted on a number of federal criminal charges in the matter of United States of America v. Nicodemo Scarfo, et al., U.S. District Court Criminal No. 88-003. Also convicted were Lawrence Merlino's brother Salvatore Merlino; his nephew, Phillip Leonetti; Nicodemo Scarfo, and others. The Merlino brothers are known to be members of the Scarfo crime family, with Salvatore Merlino functioning as an underboss, and Lawrence Merlino and Phillip Leonetti serving as soldiers within that organization. Lawrence Merlino's association with Nicodemo Scarfo goes back to at least 1979 when the two, along with Phillip Leonetti, were charged with the murder of Vincent Falcone, an Atlantic City cement contractor. The three were subsequently acquitted. Lawrence Merlino also has worked as president and part owner, of Nat Nat, Inc., a construction company in Atlantic City. He has also worked for Scarf, Inc., a construction company owned by Nicodemo Scarfo's nephew, Phillip Leonetti.

Because of his status as a career offender and an associate of a career offender, Lawrence Merlino was barred from casino premises by the Commission and this exclusion was affirmed. See, State v. Lawrence Merlino, 216 N.J. Super. 579 (App. Div. 1987), affirmed, State v. Merlino, 109 N.J. 134 (1988). Lawrence Merlino is currently incarcerated in Pennsylvania awaiting trial on other charges.

There is also no dispute that Lawrence Merlino was president of Nat Nat, Inc., a reinforced steel construction company, at the time of the incorporation of Bayshore Rebar in December of 1985. He had incorporated a company called Bayshore Rebar, Inc., in Florida prior to that time, which corporation was involuntarily dissolved on November 1, 1985, for failure to file its annual report (P-32). Prior to 1985, Nat Nat operated out of offices at 28 North Georgia Avenue, Atlantic City, which was the same address used by Scarf, Inc., a construction company headed by Phillip Leonetti, nephew of Nicodemo Scarfo and a career offender, as discussed above. The operations of Nat Nat were later moved to a home located at 15 North Decatur Avenue in Margate, which Lawrence Merlino had purchased for his former spouse and children. Lawrence Merlino did not at any time reside at that address but occasionally visited his children there, as well as to check on the affairs of Nat Nat, which were being handled by his daughter, Kimberly.

Joseph N. Merlino is the son of Lawrence Merlino and is currently 21 years old. At the time of the filing of the Division's original complaint, he was designated as president and sole owner of Bayshore Rebar, Inc. By the time of the hearing in this matter he no longer held that office, which had been assumed by his mother, although he was still vice-president and was principally employed by it in the construction rebar business. His ownership share had also been reduced to twenty-five percent, with his mother holding the rest. The "rebar" business involves the placing of steel rods at building contruction sites prior to the pouring of concrete so that the building cement structure will be reinforced with steel. Bayshore has worked on a number of casino sites in Atlantic City. Lawrence Merlino holds no office in the company and there is no evidence that he holds any interest in it or that he has been employed by it in any capacity. There is also no evidence that Lawrence Merlino has received any monies from Bayshore or, for that matter, from Joseph Merlino or Phyllis Mistie, his former spouse and the mother of his

five children. The Division also has offered no evidence showing any payments by Bayshore or Joseph Merlino to Nicodemo Scarfo, Salvatore Merlino, Phillip Leonetti or anyone else associated with the reputed Scarfo crime family, nor has any other evidence been offered to demonstrate business or personal dealings between Bayshore or its principals and Scarfo, Leonetti, and Salvatore Merlino, beyond Joseph Merlino's prior employment with Scarf, Inc., and Nat Nat, Inc.

There is no dispute as to the above facts and I so **FIND.**

The Division offered an affidavit signed by one Thomas Albert DelGiorno, an acknowledged former member of the Scarfo crime family who has testified against its members, including Lawrence Merlino, in a number of proceedings (See, P-48). DelGiorno states in his affidavit, which I set forth in full, that:

> 1. I am currently in protective custody in an undisclosed location. I currently face criminal charges for various criminal offenses and have testified for the federal government and the States of New Jersey and Pennsylvania in various criminal matters of which I have knowledge. It is my understanding that I will be provided no favorable treatment as a result of the information provided in this affidavit, nor have I been provided any other inducement for the provision of this information, such as a reduced sentence, defferal or dismissal of charges, or any other promised act in my benefit.
>
> 2. I first met an individual known as Lawrence Merlino in 1972. Lawrence Merlino was also known to me and others as Lawrence "Yogi" Merlino. Since that time, I have met with, and engaged in matters of mutual interest with Lawrence Merlino on numerous occasions. To my knowledge, Lawrence Merlino is currently in a Pennsylvania jail awaiting trial.
>
> 3. I was a fully-initiated member of an Organized Crime family headed by an individual known as Nicodemo Scarfo. I was initiated into this organization in January 1982. Furthermore, I also know that Lawrence Merlino is a fully-initiated member of the Scarfo Organized Crime family. Lawrence Merlino was initiated in the Scarfo Organized Crime family in the spring of 1980. Lawrence Merlino was promoted to the rank of captain in the Scarfo Organized Crime family in 1982.

4. During the approximate period 1982 through 1986, Lawrence Merlino spoke with me directly and personally on numerous occasions concerning various developments in certain business interests held by Lawrence Merlino, including the construction activities of certain rebar companies operating in Atlantic City, New Jersey. Lawrence Merlino is the father of an inidividual known as Joseph Merlino of Atlantic City. Lawrence Merlino informed me of a rebar company operating in the Atlantic City area by the name of Bayshore Rebar, which was the first mention of that company I heard.

5. With regard to rebar construction contracts, Lawrence Merlino informed me that it was his practice to obtain various rebar jobs in and around Atlantic City and to utilize Bayshore to actually perform the work and to receive payment for the work. Lawrence Merlino also informed me that he shared the money obtained from the Bayshore Rebar operations with Bayshore.

6. Lawrence Merlino informed me that he conducted operations in the above-described manner with Bayshore because he, Lawrence Merlino, felt he could not operate in his own name in Atlantic City due to his reputation as a member of Organized Crime. Lawrence Merlino informed me that he believed the authorities would never allow him to operate directly with casinos and other companies due to his reputation as a member of Organized Crime. For this reason, Lawrence Merlino also believed that he could not operate in the name of his own company, Nat-Nat, Inc. For these reasons, Lawrence Merlino told me he utilized Bayshore Rebar.

7. I make this affidavit at the request of the New Jersey Division of Gaming Enforcement, which agency I understand has charged that Lawrence "Yogi" Merlino is associated with Bayshore Rebar, Inc., and persons within that company. It is my testimony here that Lawrence "Yogi" Merlino is associated with Bayshore Rebar, Inc., as I have set forth above (emphasis added. [P-50]

Bayshore submitted an opposing affidavit from Lawrence Merlino, which is also set forth in full:

1. I have read the affidavit of Thomas Albert Del Giorno in support of the Division of Gaming Enforcement's application for suspension of Bayshore Rebar, Inc., and make this affidavit in response to the allegations contained within Mr. Del Giorno's affidavit.

2. In regards to the allegation of Mr. Del Giorno that I discussed with him a rebar company operating in the Atlantic City area by the name of Bayshore Rebar, Inc., I had never discussed such company with Thomas Del Giorno. Further, I never informed Mr. Del Giorno that it was my practice to obtain various rebar jobs in and around Atlantic City, nor did I inform Mr. Del Giorno that I actually utilized Bayshore Rebar to actually perform the work and to receive payment for the work. Also, I have never received or shared in any monies obtained by Bayshore Rebar operations with Bayshore or Joseph Merlino.

3. Nor have I ever informed Mr. Del Giorno that I conducted operations using Bayshore Rebar because I felt that I could not operate in my own name due to my reputation.

4. Those allegations of Mr. Del Giorno regarding Bayshore Rebar are not true, and I submit this affidavit in response to the affidavit of Mr. Del Giorno. I further disavow and deny any association with Bayshore Rebar, Inc., other than that Joseph Merlino is my natural born child (emphasis added). [R-2]

At the recent trial in the matter of United States of America v. Nicodemo Scarfo, which resulted in the conviction of Lawrence Merlino, Salvatore Merlino, Phillip Leonetti and Nicodemo Scarfo on various federal criminal charges, Thomas DelGiorno testified on behalf of the government and was questioned concerning the above affidavit. The following excerpt of transcript is taken from the cross-examination of Thomas DelGiorno:

Q Mr. DelGiorno, I return to you the affidavit that I asked you to read yesterday, did you have an opportunity to read it yesterday before we broke for the day?

A Yes.

Q I had started to ask you some questions with respect to the procedure and the circumstances under which you took this affidavit. You may be repeating some answers, but woul you please tell the members of the jury, under what circumstances it came about that you were asked to take this affidavit and how was the affidavit formulated?

A It's whoever they are from the State of New Jersey —

Q I'm sorry. Could you speak a little clearer.

A I said, whoever took this from the State of New Jersey asked me about Larry's involved in Nat-Nat.

Q Well, let me see if I understand something and correct me if I'm wrong. Somebody from the State — and you've already told us that you were escorted by Federal authorities to a meeting with some people from the State of New Jersey; is that correct?

A Correct.

Q And those people, whoever they are, was it one person or more than one person?

A I think there was more than one.

Q They interviewed you and asked you to tell them what you knew about Larry, meaning Lawrence Merlino, correct?

A Right.

Q Involvement with a company in Atlantic City by the name of Nat-Nat, that Lawrence Merlino had something to do with; is that correct?

A Correct.

Q Okay, and you told them, I gather from the answer that you gave me, that you told them information about what you knew about Lawrence Merlino's involvement with Nat-Nat; is that correct?

A Correct.

Q Did they ask you any specific questions or did they just say tell us what you know about Nat-Nat? How did it come about? What were the questions, if you recall?

A I can't recall.

Q Well, the affidavit was notarized in June of 1988. I can read it, see, the June 25th, that's about three or four months ago, is it your testimony that you can't recall today what you were asked three or four months ago?

A This looks like a summary of it.

Q It looks like a summary of it?

A Yes.

Q Is it signed?

A Yes.

Q Didn't you read it before you signed it?

A Yes.

Q All right. Now, before I asked you any more questions, I want you to read the affidavit to the jury.

A Why don't you read it? There's a lot of big words there I can't pronounce.

Q Okay, fine. All right. I'll read it and if I misstate anything — I didn't mean to embarrass you but If I —

A You didn't embarrass me. It's just that it will be faster that way.

[The affidavit is read into the record.]

Q In that affidavit, and as I understand by your testimony that you read this before you signed it; is that correct?

A Yes.

Q Did you actually dictate the words or was it after a conversation that you had with whoever from the New Jersey Division of Gaming Enforcement, that they prepared the affidavit and brought it back to you for your signature?

A They prepared it and brought it back.

Q Now, you told us that — the members of the jury, a few moments ago, in response to one of my questions, that they, whoever the representatives were from the State of New Jersey, asked you about Nat-Nat; is that correct?

A Yes, yes.

Q Well, this entire affidavit is about Bayshore, isn't it?

A Yes.

Q Would it surprise you — now, did you also understand from the people from the State of New Jersey who spoke with you, that the reason they wanted this affidavit is so that Bayshore Construction, Bayshore Company, the company of Joseph Merlino,

the son of Lawrence Merlino, could not engage in casino construction, did they tell you that's the reason?

A They said to me, I explained to them that Larry had this place Nat Nat and he used other companies to get work down the shore, and that's all I explained to them. Okay.

Q Well, did they explain to you, as paragraph seven suggests, that the reason they wanted to talk to you, I mean, this wasn't really a law enforcement agency, in that nature of that word, that they were investigating Bayshore —

A Excuse me, I thought they were a law enforcement agency.

Q Okay. All right. They were a law enforcement agency. I'll agree with you, that their purpose was to get you to take an affidavit that Lawrence Merlino was somehow involved with Bayshore and was somehow getting money from Bayshore so that Joseph Merlino, the owner of Bayshore, could not engage in business with the casino industry, did they explain that to you?

A No, they didn't explain it that way.

Q Did you understand that?

A No. They didn't explain it to me that way.

Q They didn't explain that to you.

A I told them, as far as I knew, Joseph Merlino, Larry's son, had nothing to do, except was a worker, when I knew them. I don't know what he does now.

Q Well, is it the —

A That's what I explained to them.

Q Would you agree that this entire affidavit —

A They came back with this.

Q — and your indication in there, that you had spoken with Lawrence Merlino from 1982 through 1986, leaves one who reads it to believe that it has to do with Lawrence Merlino's involvement with Bayshore? [The Court rules on an objection.]

Q Somebody wrote the affidavit and you signed it?

A Yes.

Q Did you make any attempt to correct any of it?

A When I gave — [The Court rules on another objection.]

THE WITNESS: I explained that — again, I'll explain that I only knew what Larry did. I had no knowledge of what Joseph Merlino did. The only think I knew about Joseph Merlino is that he worked in a company. When I read this affidavit, to me it doesn't say that Joseph Merlino did anything wrong. It says, that Larry was involved in construction and that's what I thought I was signing, Larry. Joseph Merlino, as far as I know, worked in a rod company. He was a young kid and he never did anything wrong. I don't know what that's supposed to mean. I know what I took it to mean.

Q Well, did you know — did you tell them that you knew about Bayshore from 1982?

A No, I said that he used various companies. I said, one of the companies he used was a brother-in-law, an ex-brother-in-law and I didn't remember the name. And they said, was it Bayshore? I said, it could be Bayshore. I wasn't sure. Again, I said, I did not know what Joseph Merlino did and this doesn't say that Joseph Merlino did anything.

Q Is it your testimony then, that the name Bayshore Construction Company was a name that was sort of foreign to you and was suggested in response to a question from the New Jersey Division of Gaming Enforcement? Was it the Bayshore you said it could have been?

A I said, it could have been, yes.

Q And then you signed the affidavit where it says, Bayshore, doesn't it?

A Yes.

Q Well, did you say to them, hey, I'm not sure it was Bayshore?

A I read this affidavit and to me this affidavit doesn't accuse him of anything only that he was in the Rebar business, and I don't even know it was Rebar. I though it was ironwork business.

Q Whatever your thoughts were as to whether it accused anyone of anything, did you believe that when you signed the affidavit, which you took under oath, that what was conveying in the

affidavit, that you signed and it was notarized in your presence, was completely 100 percent the truth?

A As far as I'm concerned it was the truth, yes.

Q You just said that you didn't even know the name Bayshore until it was suggested to you, didn't you?

A No, I didn't say that. I said that he used other companies and they said was one of them Bayshore? I said it sounds like one of them, yes. Okay. Again, I signed the paper, still — it still to me doesn't say that he did anything wrong in this paper.

Q Okay, that's your feeling. Would it surprise you to know that Bayshore, the company in this affidavit, wasn't incorporated until December of 1985? [Objection ruled on by the Court.]

Q All right. Do you know Bayshore was incorporated?

A No, I don't.

Q Do you know whether or not from the time that you — during the period of time that you say that you had occasion to speak with Lawrence Merlino, whether Bayshore ever obtained a construction job with the casino industry or even more so, ever received any funds from the casino industry?

A Bayshore was incorporated when I spoke to Larry Merlino. Larry Merlino was under me in early '86 and he had to explain to me what jobs he had and how he was getting them. So, Bayshore was incorporated at the time I was speaking to him. So, when the guy said to me, is it Bayshore? I said, it could be. Larry was supposedly reporting the job that he was doing through me in early of '86. So, yes, if it was incorporated in '85 then I heard it in '85. I didn't know when it was incorporated.

Q But did Larry have to report to you when he got money from those jobs too?

A As far as he told me, he never got no money from the jobs.

Q Well, that's not what you said in the affidavit?

A He didn't get no money from the jobs when I was — when he was reporting to me. Larry didn't give me any money from the jobs.

Q Well, will you look at paragraph five of this affidavit, Mr. DelGiorno, just look at it? Do you want me to read it to you again?

A No, I'm reading it.

Q Does it say in there that Lawrence Merlino — [Objection ruled on by the Court.]

[The Court admonishes the attorneys]

Q All right. I apologize, Mr. DelGiorno, but does it take a bright person to read something and understand that it's not 100 percent accurate?

A Yes. . . . (emphasis added). [R-3]

As indicated, Lawrence Merlino and the other defendants were convicted on November 19, 1988, of all charges in the above federal matter. The federal government was unwilling to release Thomas DelGiorno for testimony in this matter. Lawrence Merlino did not testify in the federal criminal trial.

Based on DelGiorno's testimony in the matter of U.S. v. Nicodemo Scarfo et al., I **FIND** as a matter of fact that Thomas DelGiorno spoke to Lawrence Merlino after December of 1985 and was advised by him that he used various companies in Atlantic City to obtain construction jobs. I further find that there is insufficient believable evidence to find that Lawrence Merlino specifically mentioned Bayshore Rebar in his conversations with DelGiorno and also find that there is no evidence whatsoever that Lawrence Merlino received payments from Bayshore or its principals. Bayshore initially objected to the admission of DelGiorno's affidavit on the grounds that he was a "self-proclaimed murderer, perjurer, drug-dealer, racketeer and all around criminal" (Bayshore's letter brief of June 30, 1988, at 1). Although that may be an accurate statement of DelGiorno's resume, Bayshore also offered DelGiorno's testimony on cross-examination as set forth above. In that testimony, DelGiorno, while unsure as to whether Lawrence Merlino had specifically mentioned Bayshore, did recall with sufficient clarity that Merlino had stated that he used various construction companies to get jobs in Atlantic City and that he spoke to Merlino in early 1986 after Bayshore was incorporated. I therefore **FIND** that DelGiorno's statements on cross-examination in the Federal matter are, read together with his affidavit, sufficiently credible to support the above finding of fact.

The current president and 75-percent owner of Bayshore is Phyllis Mistie, a former spouse of Lawrence Merlino. The couple had five children, separated approximately 14 years ago and is now divorced. Lawrence Merlino purchased the home at 15 North Decatur Avenue in Margate in response to Phyllis Mistie's request that he provide a place for her and the children to live. She stated that he sometimes visited the children at that address and she acknowledged that Nat Nat, Inc., was operated from the family home. Lawrence Merlino also obtained work for his eldest son, Joseph Merlino: first, five years ago, a summer job in construction with Scarf, Inc.; and later, regular full-time employment with Nat Nat, Inc. Ms. Mistie also testified that her daughter Kimberly worked as a secretary for Nat Nat at the 15 North Decatur Avenue address and that Lawrence Merlino transferred Nat Nat's business to that address from 28 North Georgia Avenue in Atlantic City after Kimberly had a child. Phyliis Mistie claimed that she had a difficult time at first living in Atlantic City with her former husband and that she was something of a "nervous wreck" (1T,148). She stated that Joseph Merlino decided to go into business for himself; he incorporated Bayshore Rebar, Inc., and began to operate the business out of the 15 North Decatur address. She acknowledges that Bayshore and Nat-Nat use the same insurance agent, C.J. Adams, and she conceded that Lawrence Merlino had paid phone bills for the 15 North Decatur address, including calls made for Bayshore, on several occasions (1T,153,164). Phyllis Mistie claims that prior to July 1986, she worked briefly as a secretary for Bayshore but held no office or interest (1T121, 6-25). Although Ms. Mistie appeared to understand the nature of the company's business in a general sense, she was uncertain as to details of the work and unfamiliar with the scope of the company's involvement in at least one rebar job being done on a bridge (1T 119). Ms. Mistie also claims that she had no indication that Lawrence Merlino was exercising any influence over Bayshore or Joseph Merlino, and stated that ". . . my son wouldn't listen to anything he says. His son knows more than his father" (1T151, 22-23).

Joseph Merlino concedes that his father did get him a summer and weekend job five years ago with Scarf, Inc., which is owned and operated by the nephew of Nicodemo Scarfo, Phillip Leonetti. Joseph Merlino also admits that he later worked for Nat Nat, Inc., which was operated by his father and formerly by his uncle, Salvatore Merlino, who is reputed to be the underboss of the Scarfo crime family. In the course of working for Nat

Nat, Joseph Merlino met Nat Nat foreman Rocco Bunodono and Nat Nat's bookkeeper, Joseph Golatto and both of these men later provided professional services to Bayshore. Even after Bayshore had been established in December 1985, Joseph Merlino continued to receive payments from Nat Nat. On or about March 10, 1986, he received a $15,000 check from Lawrence Merlino, president of Nat Nat, which check was characterized as a 1985 bonus check (P-40). In 1984, he had also received another bonus of approximately $37,000 from his father for work performed for Nat Nat (P-39). In March 1986, Joseph Merlino purchased a condominium in Margate from Lawrence Merlino, a condominium which Nat Nat had previously purchased from Scarf, Inc. (P-34 to P-39). Joseph Merlino discussed this purchase with his father and claims that he sought to acquire the condominium for investment and tax shelter purposes (2T 226). There is no evidence that this condominium played any part in the operation of Bayshore or that the purchase of the property was in any way improper or irregular. There is also no evidence of any further bonuses paid to Joseph Merlino from Lawrence Merlino and Nat Nat subsequent to 1986. Joseph Merlino also claimed, and the Division did not dispute, that some of the bonus monies were used by him to repay existing loans from Nat Nat (2T 239), and that part of the 1986 bonus was applied to the down payment for the condominium. After leaving employment with NatNat in 1985, Joseph Merlino worked as a general foreman in construction with the United Carpenters of Glennside, Pennsylvania, and later for G&H Steel and M&M Construction.

Bayshore Rebar, Inc., of New Jersey was incorporated on December 13, 1985, listing Joseph N. Merlino as incorporater and Director, and it was located at 15 North Decatur Avenue in Margate (P-29). Joseph Merlino's sister Kimberly also worked for Bayshore when the company was located at 15 North Decatur Avenue. Since that time, the company, as well as the family, has moved to a ventnor address which was purchased by Joseph Merlino and in which Lawrence Merlino has no proven financial interest. Joseph Merlino is also no longer president of the company but continues to serve as vice-president and part owner. He claims that this change was necessary to enable him to receive his journeyman papers. At the time of hearing, Phyllis Mistie was functioning as Bayshore's president. Rocco Bunodono, formerly a foreman for Nat Nat and a long-time friend of Lawrence Merlino, has been Bayshore's foreman since March

1986 and has played an instrumental role in the company, including filing an application for a construction contractor's license on its behalf in September 1986 after Joseph Merlino's application had been rejected because of his comparatively tender age (P-10).

Joseph Merlino testified and confirmed his mother's account of the origins and operation of Bayshore, as well as his prior experience with Scarf, Inc., and Nat Nat, Inc. Neither Phyllis Mistie nor Joseph Merlino contest the factual allegations set forth in the Division's complaint of January 6, 1987, although they claim, and the Division does not dispute, that Bayshore has since moved its operations and changed its officers, as discussed above. In a statement given to the Division on November 20, 1986, Joseph Merlino acknowledged that he had occasionally consulted with Lawrence Merlino as to Bayshore matters and, in particular, had asked him whether a contractor named Feriozzi, with whom Bayshore was doing business, was a "nice guy" who "pays his bills" and is "a good payer" (P-31 at 22, 23, 26). Joseph Merlino denies that Lawrence Merlino has gotten any jobs for Bayshore and the Division offers no direct evidence proving otherwise, with the exception of the above testimony of Thomas DelGiorno.

Phyllis Mistie further denied that the company had received any loans from Lawrence Merlino or made any payments to him. She stated that the family moved some eight months ago to a house in Ventnor which Joseph Merlino purchased and from which Bayshore now operates. Nat Nat continues to operate from the 15 North Decatur address and Kimberly Merlino is still employed in that business. Ms. Mistie testified that she became president and 75 percent owner of Bayshore approximately six months before the hearing in this matter because Joseph Merlino wanted to qualify as a journeyman and felt that he was precluded from doing this while serving as president. She stated that he was still serving as vice-president, as of the hearing (1T 115). She also claimed that an additional motive for her assuming the presidency of Bayshore was to qualify the company for minority work under affirmative action guidelines (T1 116). An insurance agent for C.J. Adams, Deborah Wehran, who handled insurance for both Bayshore and Nat Nat, testified that she had discussed Nat Nat with Phyllis Mistie whenever her daugther was absent or otherwise unavailable and noted that Phyllis was listed as a contact for Nat Nat (2T 207 - 19)(P-25). She also claimed that Phyllis Mistie had explained that she was not employed by or part of Nat Nat.

Neither Phyllis Mistie nor Joseph Merlino disputes the allegations made by the Division in its complaint. Joseph Merlino denied that the name Bayshore Rebar, Inc., which had previously been used by his father to incorporate a Florida company, was adopted at Lawrence Merlino's suggestion.

One of the first construction jobs obtained by Bayshore was from cement contractor Joseph Feriozzi, who was involved in construction of a parking garage at Resorts International Hotel and Casino in 1986. Ferriozzi was one of the two big contractors in Atlantic City at the time. Bunodono was working on the job, which was being performed by C.J.S. Co., a structural construction firm. Because C.J.S. was not a rebar company and consequently was having some difficulties adequately manning the job (1T 66; 2T 100-02), Feriozzi was unhappy with its performance on the job. Joseph Merlino claims that he became aware of C.J.S.'s problems on the job through Feriozzi's complaints to a "street man," who was responsible for recruiting workers on construction projects. Joseph Merlino asked Feriozzi if Bayshore could take over the job. Rocco Bunodono was present when this request was made. Feriozzi agreed and Merlino asked Bunodono, whom he had known from working with Nat Nat, Inc., to serve as foreman on the completion of the Resorts parking garage. Feriozzi agreed to pay Bayshore on a bi-monthly basis, which was a somewhat usual arrangements but Feriozzi consented because Bayshore was a relatively new company (2T 83,6-25). Bayshore offered a certification from Feriozzi, who also testified, which stated the following:

> 8. Bayshore Rebar has been the low bidder on a number of projects including Bally's Park Place and the Tropicana Hotel and has done sub-contracting work on these projects for L. Feriozzi Concrete. Additionally, Bayshore Rebar has sub-contracted at Resorts International Garage after the default of another contractor.
>
> 9. The hard work, diligence and quality of work exhibited by Joseph Merlino and Bayshore Rebar is exceptional.
>
> 10. I have found, through my dealings with Bayshore Rebar, that Joseph Merlino is a dedicated and sincere individual. He is a person of good character, honesty and integrity.
>
> 11. I have no perception or belief that respondent, Bayshore Rebar, or its President, Joseph Merlino, is in any way

involved or associated with organized criminal activity or Lawrence Merlino.

12. Furthermore, I have no perception that respondent, Bayshore Rebar, or its President, Joseph Merlino, is a "front" for organized criminal activity or Lawrence Merlino. [R-7]

Feriozzi also certified that he has not been the subject of any charges, indictments or accusations in his forty years of doing construction business in Atlantic City. Nat Nat had been previously employed by Feriozzi on a variety of casino jobs. This working relationship was interrupted in 1979 when Lawrence Merlino was accused, along with Leonetti and Scarfo, of murdering a cement contractor named Vincent Falcone. Upon learning of the murder charges against Lawrence Merlino, Feriozzi stated that he was a "sick pup," and did notknow what to do or what he had gotten himself into (2T 95,16-20; 96). Merlino, Scarfo and Leonetti were later acquitted of the charge and Nat Nat subsequently performed more work for Feriozzi. In 1986, when Joseph Merlino asked if he could take over the C.J.S. job at the Resorts parking garage, Feriozzi asked him if Lawrence Merlino was his father. Ferriozzi testified that he felt concerned that Lawrence Merlino might become involved (2T 117, 124-25). Feriozzi also expressed to Joseph Merlino his desire that he not have anything to do with Nat Nat, but later became confident that Joseph was working on his own. Feriozzi denies having been contacted by Lawrence Merlino, or anyone else other than Joseph Merlino, concerning Bayshore's request for work. Rocco Bunodono's presence as foreman also gave confidence to Feriozzi, because of Bunodono's reputation as an effective foreman who knew how to get a job done (2T 98,11-25). After agreeing to work as foreman on the Feriozzi job, Bunodono also assisted Joseph Merlino by completing an application for a construction contractor's license on September 11, 1986, and listing himself as the company's superintendent. Joseph Merlino had previously applied but had been rejected because of his age and relative inexperience. Joseph Merlino denies having asked his father for any help in obtaining work with Feriozzi at the Resorts garage job or at any other location, but acknowledges that he asked Lawrence Merlino who Feriozzi was and that he wanted to know if he was reliable with payments (P-31 at 22 to 26, 168).

Rocco Bunodono testified that his function as foreman for Bayshore is to "see that the job runs smooth" and indicates that he has known Joseph Merlino since the latter was a small child (1T 40,6-22). Bunodono has also known Lawrence Merlino for over twenty years: they grew up in the same neighborhood, and Merlino was the best man at his wedding. He claims that he saw little of Lawrence Merlino for some ten years after he left Philadelphia and before Lawrence Merlino became active in construction in Atlantic City. When they renewed their acquaintance, Bunodono worked as foreman for Nat Nat for a least six months while completing a rebar job on the Ocean Club, and thereafter worked with G & H Construction, as well as with M & M Construction, a minority contractor. Lawrence Merlino, as president of Nat Nat, visited G & H job sites on occasion to talk to his son and a nephew employed by that company. The Division offered surveillance photographs taken by lieutenant Edward Hepburn of the Atlantic City Prosecutor's Office showing Lawrence Merlino and Rocco Bunodono together at various construction sites including the Taj Mahal Casino project (P-1). Lieutenant Hepburn testified that he conducted surveillance after receiving a report that the M & M Company (allegedly a minority outfit) was actually being run by Lawrence Merlino. The photos were taken in April 1985 and show Lawrence Merlino and Rocco Bunodono on the construction site (P-1 through P-4). The photographs also show Lawrence Merlino on the steel at a hotel/casino. Lieutenant Hepburn had no knowledge as to any involvment of Joseph Merlino in his father's reputed criminal affiliations with the Scarfo crime family. Bunodono denies that Lawrence Merlino visited him at job sites, other than those involving Nat Nat. He concedes that Lawrence Merlino visited him when he was working for M&M, but states that he has never seen Lawrence Merlino on a job with Bayshore and that he has no knowledge of any contact between him and his son's company.

The Division also offered copies of a mortgage and residential loan application in connection with the purchase of the Ventnor property from which Bayshore now does business, which states that Joseph Merlino was married at the time of application in 1987. This was not the case. Joseph Merlino denies having made such a representation in connection with the mortgage application, but concedes that he signed the loan application forms containing the false statement (3T 35,1-4).

There is no dispute as to the above facts, except as indicated, and I so **FIND.**

ISSUES

The issues to be resolved are:

(1) whether the Division of Gaming Enforcement has proven by a preponderance of the believable evidence that Bayshore is associated with a career offender or a career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policy of the casino control act in the gaming operations within the meaning of N.J.S.A. 5:12-86f so as to disqualify Bayshore from holding a vendor registration or casino service industry license;

(2) whether Bayshore Rebar, Inc., has established its eligibility by clear and convincing evidence for a casino service industry license pursuant to N.J.A.C. 19:41-3.2(a)2, including the requirement that it establish its reputation of good character, honesty and integrity pursuant to N.J.A.C. 19:43-1.3(c), and that of its officers pursuant to N.J.A.C. 19:43-1.14.

DISCUSSION AND CONCLUSIONS

(1) N.J.S.A. 5:12-86f (Inimical Association)

The state of New Jersey extends strict regulation through the Casino Control Act to all persons, locations, practices and associations related to the operation of licensed casino enterprises and to all related service industries. See, N.J.S.A. 5:12-1b(6). The legislative findings underlying the Act also provide that:

> [l]egalized casino gambling in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations. . . . N.J.S.A. 5:12-1b(7).

Moreover, participation in casino operations is deemed to be a revocable privilege conditioned upon the proper and continued qualification of individual licensees or registrants. The New Jersey Legislature also declared that:

> [s]ince 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 the law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act . . . . N.J.S.A. 5:12-1b(9).

This paramount concern with sealing off, to the extent possible, the casino industry and the vital service industries that serve it from infiltration and domination by organized crime is effectuated by the criteria established for disqualification of applicants seeking casino licenses:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis on any of the following criteria . . . .
>
> > f. The identification of the applicant or any person who is required to be qualified under this act as a condition of a casino license as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of 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, ultilizing 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; N.J.S.A. 5:12-86f [emphasis added].

The Casino Control Commission has defined the phrase "inimical to the interest of the State of New Jersey or of licensed gaming" to mean "adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act." N.J.A.C. 19:48-1.1.

At issue here is whether the Division has proved that Bayshore Rebar or its officers are associated with a career offender or career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policy of the Act and to gaming operations and thereby is disqualified. The above provision concerning inimical associations was considered by the Appellate Division of the Superior Court of New Jersey in a 1985 case where a number of members of a union in Atlantic City were found to be inimically associated with Nicodemo Scarfo, within the meaning of the act. See, In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985), certif. denied 102 N.J. 352 (1985), cert. denied 475 U.S. 1085 (1986). In the Local 54 case, the Appellate Division upheld the Commission's finding of disqualification under N.J.S.A. 5:12-86f, where the Division had produced evidence illustrating the association between union employees and Scarfo. That evidence consisted of:

(1) a telephone list seized from Scarfo after his arrest for the murder of Vicent Falcone which contained names and addresses of several Local 54 employees, some listed in code;

(2) a note found in Scarfo's dresser drawer on the same occasion indicating Scarfo's interests in the activities and control of Local 54;

(3) the fact that the bail for Scarfo, Leonetti and Lawrence Merlino in the Vincent Falcone murder matter was paid by union employees and their relatives;

(4) the fact that one of the union employees put his house up as property bail in connection with those arrests;

(5) the immunized testimony of Joseph Salerno in the trial of Scarfo, Leonetti and Lawrence Merlino for the murder of concrete contractor Vincent Falcone as to the fact that Salerno had overhead Scarfo say that he had control of unions and had obtained union positions for certain persons. Salerno's testimony did not refer to any conversations between Scarfo and union employees which specifically referred to Local 54 by name;

(6) evidence of connections between Local 54 business dealings and persons or firms tied to Scarfo (e.g., the same insurance broker and real estate agent; the hiring by Local 54 of a firm that had put up bail for Scarfo, Leonetti and Lawrence Merlino; use of the same car rental company). See, 203 N.J Super. at 310 to 316.

The Appellate Division rejected the argument that the Division had failed to prove the exertion of any actual influence over union affairs by Scarfo and found that ample circumstantial evidence of such influence had been introduced to support the conclusion that the association was inimical and thus disqualifying. 203 N.J. Super. at 321. The New Jersey Supreme Court has also affirmed that the Commission may act to prevent possible inimical influences on licensees or applicants and need not wait until such influence is exerted. See, In re Application of Boardwalk Regency, 90 N.J. 361,372 (1982). The Appellate Division also went on to reject the First Amendment freedom of association claim made by the Local 54 employees and upheld the "inimical" criterion against the charge that it was void for vagueness.

The Local 54 case did not involve family relationships between licensees and career offenders. That issue was dealt with by the Appellate Division in the racing case of Niglio v. New Jersey Racing Commission, 158 N.J. Super. 182 (App. Div. 1978). In Niglio, the Appellate Division upheld a decision by the Racing Commission suspending the racing license of a person married to another person who was disqualified from participating in racing because of criminal connections. Because of evidence submitted

of the spouse's extensive association with the person disqualified, as well as of her financial dependence, the disqualification was based on the association and financial dependence, not on the fact of marriage. 158 N.J. Super. at 186.

Another case dealing with family ties is D'Ascenso v. Division of Gaming Enforcement, 2 N.J.A.R. 92 (1980), by the Honorable Joseph Fidler, ALJ, in which he concluded that a cocktail waitress licensed by the Commission was not disqualifed under N.J.S.A. 5:12-86f by her father's status as a career offender, because she had had only infrequent and insignificant contacts with him since in her childhood. Given the nature of her cocktail waitress function at the casino, this minimal association was seen to pose no appreciable threat to the proper functioning of legalized gambling. D'Ascenso's relationship with a live-in boyfriend who was also engaged in criminal activities was found to present no bar to her licensure and in light of the fact that the boyfriend did not exercise any significant influence or control over her and, to the contrary, as it appeared that she had some beneficial and restraining effect on him, as occasionally happens in these matters. 2 N.J.A.R. at 95. There is no evidence of such a beneficial effect on Lawrence Merlino.

The Division argues in this case that it has shown an inimical association with Lawrence Merlino sufficient to disqualify Bayshore and its principals. In particular, the Division asserts that the affidavit and testimony of Thomas DelGiorno's provides direct (albeit hearsay) evidence of Merlino's intention to use Bayshore to get construction business in Atlantic City. The Division argues that DelGiorno's statements are credible, despite his background in crime, a background which rivals and probably exceeds that of Lawrence Merlino. It notes that no promises were made to DelGiorno in exchange or as a condition for this testimony.

Apart from DelGiorno's statements as to Lawrence Merlino's involvement, the Division conceded that there was "no smoking gun", to use a phrase that DAG Steven Cirillo borrowed from another context, but it argued that there is an accumulation of factors (as in the Local 54 case) adding up to an inimical association of a non-familial nature. The Division first notes that Lawrence Merlino has long been associated with the rebar field and has owned and worked with several companies, including Nat Nat and the

Floridian version of Bayshore Rebar, Inc. It notes that Lawrence Merlino's interests in the New Jersey Bayshore is a natural extension of his prior activities and argues that he has been seen on various construction sites visiting Rocco Bunodono, who is foreman and superintendent for Bayshore and who was formerly a forman with Nat Nat, as well as a personal friend of Lawrence Merlino for many years. The Division notes that Bayshore initially operated rent-free from a home located at 15 North Decatur Avenue in Margate, which home was owned by Lawrence Merlino and out of which Nat Nat also operated and continues to operate. The Division notes that the family phone and utility bill for the 15 Decatur Avenue address were occasionally paid by Lawrence Merlino. The Division also emphasizes the business dealings between Joseph Merlino and Lawrence Merlino, including the purchase of a condominium formerly owned by Nat Nat and Scarf, Inc., which purchase was partly made possible through DelGiorno's bonuses provided by Merlino and Nat Nat. The Division also notes that Bayshore, in addition to adopting the same name used by Lawrence Merlino for another company, relied on the same insurance agency, C. J. Adams, and also utilized the services of the same bookkeeper and foreman, who had previously worked for Nat Nat. The Division cites evidence that Phyllis Mistie Merlino was, on some occasions, involved in the business dealings of Nat Nat while living at the 15 North Decatur address. Also noted is the fact that Joseph Merlino's sister Kimberly runs the operations of Nat Nat during her father's incarceration. The Division argues that the relocation of the Merlino family does not negate the various connections between Bayshore and Lawrence Merlino and Nat Nat in that the inimical association between Bayshore and Lawrence Merlino has not been severed, although it may have been better hidden and disguised. Considering DelGiorno's affidavit as well as and all of the circumstantial evidence, the Division contends that it has met the standard set forth in N.J.S.A. 5:12-86f for disqualification of Bayshore.

Counsel for respondents, Francis Hartman, Esq., sees the Division's case as not only lacking a smoking gun but also consisting largely of smoke. He argues that the State has, on the most tenuous of factual allegations, sought to darkly cloud the blood relationship between Joseph Merlino and his father and imply an inimical business association between them which has no basis in fact. Counsel for respondent argues, first (and the Division does not dispute), that the State has shown no de jure relationship between Bayshore and Lawrence Merlino in that the latter holds no stock or office in and

has not received any payments from Bayshore. As to the rest of the underlying de facto aspects of the Division's evidence, respondent admits that Joseph Merlino worked briefly as a laborer for Scarf Inc., when he was 16 and argues that he had no further connection with that company. As to Joseph Merlino's latter job with Nat Nat, respondent claims that there is nothing unusual about a son working for his father and that the sins of the father should not fall upon his children. It is also not unusual, respondent argues, for a person to start a business from his or her home, as Joseph Merlino did at 15 North Decatur Avenue. Respondent notes that Lawrence Merlino did not at any time live in the home, and that the fact that he may have occasionally paid for the phone and utility bills is only incidental to the fact that his family and former spouse lived in the home and he chose to shoulder some of their financial obligations. Respondent notes that Nat Nat was not originally located at 15 North Decatur, but operated out of 28 North Georgia Avenue in Margate and was moved to the Margate address only for the convenience of Kimberly Merlino, who was one of its principal employees. As to Phyllis Mistie Merlino, respondent notes that she had only minimal involvement in the affairs of Nat Nat and does not have an amicable relationship with Lawrence Merlino. Concerning Joseph Merlino's efforts to get casino work, respondent argues that there is no evidence that Lawrence Merlino at any time did anything to get work for Bayshore. It characterizes Joseph Merlino's efforts to establish a business as the product of a young man's desire to succeed on his own and describes the opportunity to do so given by Joseph Ferriozzi as a legitimate business transaction in which Ferriozzi decided to give the young man a chance. Respondent also notes, and the Division does not dispute, that, beyond the criminal charges that are not dealt with in this decision, no criminal charges have ever been brought against Joseph Merlino. Joseph Merlino's purchase of property from Nat Nat, respondent argues, an arm's-length financial transaction which was in no way unlawful an improper, and which played no role in the operation of Bayshore's business. Respondent also raises and dismisses the possibility that Joseph Merlino was given bonuses and allowed to purchase property in order to shield money belonging to Lawrence Merlino or Nat Nat from possible forfeiture under RICO, the federal law pertaining to racketeer-influenced corrupt organizations. Counsel for respondent also deems DelGiorno's affidavit as unworthy of belief and argues that it is further weakened by DelGiorno's statements on cross-examination in the matter of United States v. Scarfo, et al.

As to DelGiorno's statements, I note that hearsay is admissable in this proceeding and may provide the residuum of proof required. See, N.J.S.A. 5:12-107a(6); State v. Merlino, infra. DelGiorno's affidavit, as clarified by his testimony, is credible. Similiar immunized testimony was found to constitute part of the inimical association in the Local 54 case discussed above. Although DelGiorno's testimony in this case was uncertain as to whether Bayshore was specifically mentioned by Lawrence Merlino, Salerno's testimony in the Local 54 case also did not contain any recollection of a specific reference to Local 54 by name. See, 203 N.J. Super. at 318.

Beyond DelGiorno's statements, there is ample evidence of association between Lawrence Merlino and Bayshore Rebar, Inc., and its officers and foreman. Bayshore was formed shortly after a company of the same name owned by Lawrence Merlino was dissolved in Florida, and this similarity of names is more symbolic than coincidental given the rest of the connections. Joseph Merlino, who was Bayshore's initial president and owner, cut his teeth in the construction business with Scarf, Inc., which has ties to Nicodemo Scarfo through its owner Phillip Leonetti, and he later worked at his father's side at Nat Nat, Inc. While it is quite common for sons and, more recently, daughters, to follow their father's footsteps into business, the connection between Nat Nat and Bayshore was, at least at the outset of Bayshore's operation, quite close. The company shared the same residential office space, the same insurance agency, the same bookkeeper, and Bayshore relied heavily on Rocco Bunodono, who had formerly worked with Nat Nat, as its foreman. The importance of Bunodono's extensive role in this matter as a connection between Lawrence Merlino and Bayshore is further emphasized by the photographic evidence of the two men together at construction sites. Bunodono was also instrumental in obtaining Bayshore's initial license from Atlantic City, as well as one of its first substantial construction jobs from Joseph Feriozzi, who testified that Bunodono's presence reassured him that the job would run smoothly. Feriozzi also testified that he had felt fear, at least for his business if not for himself, when he had earlier learned of charges lodged against Lawrence Merlino for the murder of Vincent Falcone, an Atlantic City cement contractor. While there is no evidence that Lawrence Merlino intervened to get business for Bayshore, Feriozzi was concerned with his possible involvement. Joseph Merlino denies having generally discussed Bayshore business matters with his father, but he admits that he asked him whether Feriozzi was

"a good payer." Joseph Merlino thus demonstrated that he turned to his father for advice on at least that occasion and it is not unlikely, given their prior working relationship, that he did so on other occasions. But this case does not rest on that sort of speculation. The facts show that Joseph Merlino consulted with and dealt with his father in other financial matters, such as the purchase of the Margate condominium, which was made possible by substantial bonuses given by the father to the son. Although this real estate deal was above-board and regular in all respects, it tends to establish financial dealings between Joseph Merlino and his father. The fact that Lawrence Merlino also gave his son Joseph bonuses which totaled some $50,000 also suggests that Joesph Merlino was, at least to that extent, financially dependent upon his father and Nat Nat, despite the fact that he worked for United Carpenters and G & H Construction and had started Bayshore's business operations. Was Lawrence Merlino simply trying to do right by his oldest son or were these transactions some nefarious attempt to conceal Lawrence Merlino's assets from the reach of the federal government? The proofs submitted do not supply an answer to this question but the fact of the bonuses and the real estate deal, as well as the other business connections proven, establishes an association between Joseph Merlino and his father which goes far beyond one of simple blood relation. The common business dealings of Bayshore and Nat Nat are similar to those which were found, in the case of Local 54, to constitute an inimical association.

As stated, the Division's burden in this case is to demonstrate that Bayshore, through its officers or principle employees, is associated with Lawrence Merlino, a career offender and a member of a career offender cartel, in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policy of the Casino Control Act and gaming operations. N.J.S.A. 5:12-86f. The respondents contend that the State has shown much association between themselves and Lawrence Merlino, but that none of it is inimical because it is based on the natural and constitutionally protected connection of family. They point to the absence of any evidence showing actual influence by Lawrence Merlino over Bayshore. Such an argument was also raised, and rejected, in the Local 54 case, where the Appellate Division found ample circumstantial evidence of Scarfo's influence over union employees. 203 N.J. Super. at 321. Even without DelGiorno's statements, there is, in this case, ample circumstantial evidence of the external influence of Lawrence Merlino on Bayshore

Rebar, Inc., and that evidence ranges from the choice of name of the company to payment of bills and rent for its initial location, to the selection of insurance companies, bookkeeper and foreman and also to advice given by Lawrence Merlino to Joseph Merlino as to the conduct of the business and as to the purchase of real estate (unrelated to the business) which was financed, in part, by very generous bonuses provided by the father to the son. Joseph Merlino is not merely Lawrence Merlino's son in the context of this case. Their relationship is far beyond that. Their business dealings have become inextricably linked with their familial connection. If Joseph Merlino were not Lawrence Merlino's son but merely a social or business associate, the evidence in this case would be sufficient to support a conclusion that the two men are associated and that this association is of such a nature that it suggests influence and control of Bayshore by a career offender and therefore is inimical. The fact that Lawrence Merlino is related to Joseph Merlino by blood and that he was once related to Phyllis Mistie by marriage should not be allowed to obscure the nature of the business association which has formed between them or to put it beyond the reach of State regulation in the highly sensitive area of casino operations. Family ties, without greater association, cannot provide a basis for disqualification under N.J.S.A. 5:12-86f, but they do not preclude a finding of disqualification if other evidence of an inimical association, beyond that of relation by blood or marriage, is proven. See, e.g., Niglio v. New Jersey Racing Commission. Such proof is present in sufficient amount in this case. This matter is also distinguishable from the case of D'Ascenso v. Div. of Gaming Enforcement because there the contacts between the licensee and her father were infrequent and insignificant and posed no appreciable threat to the proper function of legalized gambling, especially in light of the licensee's function as a cocktail waitress. Here, Joseph Merlino's contacts with his father are substantial and on going, and while they embrace the usual aspects the relationship between a father and his son, they also are characterized by extensive business associations that go beyond the family tie and pose an appreciable threat to the operations of a casino service industry. Lawrence Merlino is now and has since July 1987 been incarcerated awaiting trial on charges of murder and racketeering does not diminish this association. It is not unknown for inmates to control enterprises far beyond the prison walls. The fact that Lawrence Merlino is in jail because he is unable to make bail also provides a most compelling incentive and motive for him to be involved in Bayshore's business affairs. As the respondent notes, there is no evidence, beyond DelGiorno's statements, that Lawrence

Merlino is directly so involved or that he has received any monies from Bayshore or from Joseph Merlino. However, such evidence is not necessary to reach a conclusion that their association is of such a nature as to create a reasonable belief that it is inimical to the policies of the Casino Control Act and gaming operations. I **CONCLUDE** the evidence submitted, including DelGiorno's statements, as to the association between Bayshore Rebar, Inc., and Lawrence Merlino is sufficient to disqualify Bayshore under N.J.S.A. 5:12-86f and that Bayshore's vendor registration issued under N.J.S.A. 5:12-104b should be revoked.

(2) Casino Service Industry Application

The remaining issue is whether Bayshore Rebar, Inc., and its officers have proven their eligibility to be licensed as a casino service industry pursuant to N.J.S.A. 5:12-92c under N.J.A.C. 19:43-1.3 and 1.14. The Casino Control Act provides for licensing and registration of casino service industries, including construction companies contracting with casino applicants or licensees:

> [a]ll casino service industries not included in subsection a. of this section [those providing goods or services directly relating to casino or gaming activity] shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino applicant or licensee or its employees or agents. Such casino service industries, whether or not directly related to gaming operations, shall include suppliers of alcoholic beverages, food and nonalcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotels; limousine services and construction companies contracting with casino applicants or licensees or their employees or agents. . . . d. Licensure pursuant to subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act (emphasis added). [N.J.S.A. 5:12-92c,d]

Those grounds of disqualification include those of inimical association under N.J.S.A. 5:12-86f, as discussed and concluded above. The regulations promulgated by the Casino Control Commission provide, with respect to issuance of casino service industry licenses, that:

> [n]o casino service industry license shall issue unless the individual qualification of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission. . . [i]n the case of casino service industry licenses issued in accordance with section 92c and d of the Act each such applicant in accordance with the standards of section 92d and 86 and the Act. [N.J.A.C. 19:41-3.2]

The casino control regulations further provide, as to standards for qualification for a casino service industry license, that:

> The general rules relating to casino service industry standards for qualification are set forth in N.J.A.C. 19:41-3.2 et seq. . . (c) Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its reputation for good character, honesty and integrity. . . [N.J.A.C. 19:43-1.3(a) and (c)] (emphasis added)

As to disqualification, the regulations state that:

> A casino service industry license may be denied to any applicant who has failed to prove by clear and convincing evidence that he or any of the persons required to be qualified, are in fact qualified in accordance with the act and with the provisions of these rules and regulations, or who has violated any of the provisions of the Casino Control Act or these rules and regulations, or who has violated any of the provisions of the Casino Control Act or these rules and regulations, or who disqualified under of the criteria set forth in section 86 of the Casino Control Act. [N.J.A.C. 19:43-1.5] (emphasis added)

With respect to persons who need to be qualified before a casino service industry license can be issued, the Commission has provided that, as to Casino Service Industry Licenses issued in accordance with Section 92c and d of the Act of the following persons must be qualified:

(i.) The enterprise;

(iii.) Each owner of the enterprise who directly or indirectly holds any beneficial interest or ownership in excess of five percent of the enterprise;

(v.) Each director of the enterprise except that a director who, in the opinion of the Commission, is not significantly involved in or connected with the management or ownership of the enterprise shall not be required to qualify;

(vi.) Each officer of the enterprise significantly involved in the conduct of business and each officer who the Commission may consider appropriate for qualification in order to insure the good character, honesty and integrity of the enterprise;

(viii.) The management employee supervising the regional or local office which employs the sales representative soliciting business or dealing directly with a casino licensee;

(ix.) Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees;

(x.) Any other person whom the chairman may consider appropriate for approval or qualification. [N.J.A.C. 19:43-1.14(a)2]

As discussed above, Joseph Merlino is currently vice-president and treasurer, as well as 25-percent owner of Bayshore Rebar, Inc. His mother, Phyllis Mistie, is the president and secretary of the company and also 75-percent owner. Rocco Bunodono functions as the Superintendent and foreman for Bayshore on various construction jobs. An application for licensure as an Casino Service Industry pursuant to N.J.S.A. 5:12-92c, was filed by Bayshore Rebar, Inc., on July 29, 1988.

The Division objected to that application on August 10, 1988, maintaining that Bayshore cannot demonstrate, by the requisite clear and convincing evidence, the good character, honesty and integrity necessary for licensure. The Division also argued that Bayshore was disqualified for licensure as a casino service industry because of its association with Lawrence Merlino and due to the indictment of the applicant's principal, Joseph N. Merlino. In addition, the Division asserts disqualification on the basis N.J.S.A.

5:12-86b because of alleged misrepresentations made by Joseph N. Merlino and Phyllis Mistie at the hearing in this matter. No particular misrepresentations are cited by the Division, which nonetheless argues that the testimony of the two was "less than truthful concerning several issues of fact" (Division's objection of August 10, 1988, at 3).

As to this last claim of misrepresentation, I **CONCLUDE** that the Division has failed to show that Joseph N. Merlino and Phyllis Mistie supplied any information which was untrue or misleading as to any material fact pertaining to their qualifications. The Division's case, beyond the statements of Thomas DelGiorno, was largely circumstantial, and the respondent did not deny the allegations of the complaint. This case turns on the interpretation to be given to those admitted facts. The Division perceives, and I conclude that it has proven, an inimical association where the respondents see only family connections. The Division has not shown, however, that the respondent supplied untrue or misleading information as to any material facts and I **CONLCUDE,** on that basis, that Bayshore is not disqualified from receiving a casino service industry license under N.J.S.A. 5:12-86b.

The Division also cites the criminal indictment pending against Joseph N. Merlino as an additional basis for disqualification, under N.J.S.A. 5:12-86c and d.. Because the matter of this pending indictment as set forth in the amended complaint was severed in order to expedite resolution of the original complaint, as well as the casino service industry license application matter, it is not appropriate at this time to consider the indictment pending its resolution and I so **CONCLUDE.**

The Division also asserts Bayshore's inimical association under N.J.S.A. 5:12-86f as precluding the issuance of a casino service industry license in this instance under N.J.A.C. 19:41-3.2(a)2. The Casino Control Act provides that licensure for a casino service industry may be denied when the applicant is disqualified under section 86, including 86f. See, N.J.S.A. 5:12-92d. The rule requiring that an applicant also establish its reputation for good character, honesty and integrity by clear and convincing evidence is in addition to the basic requirement that the applicant not be disqualified under N.J.S.A. 5:12-86. See, N.J.A.C. 19:43-1.3(a),(c). The Commission has discretion to deny a casino service industry license application if it concludes that the nature of the

disqualification is such as to render issuance of the license contrary to the policy of the Act and to gaming operations. In this instance, the evidence supports the conclusion that Bayshore is disqualified by virtue of its inimical association with Lawrence Merlino, a career offender and a member of a career offender cartel. On the basis of this disqualification alone, and without reaching the issue of the reputation of Bayshore and its officers for good character, honesty and integrity, I **CONCLUDE** that the Bayshore Rebar, Inc., application of for a casino service industry license should be denied by the Commission.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that respondent Bayshore Rebar, Inc., is ajudged to be disqualified pursuant to N.J.S.A. 5:12-86f and that its vendor registration, issued pursuant to N.J.S.A. 5:12-104b, be revoked. It is further **ORDERED** that the application of respondent Bayshore Rebar, Inc., for casino service industry license pursuant to N.J.S.A. 5:12-92c and d is denied on the grounds of disqualification under N.J.S.A. 5:12-86f. It is further **ORDERED** that all casino licensee are prohibited from transacting any business — present or future, direct or indirect — with Bayshore Rebar, Inc.

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

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

Dec. 20, 1988
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

12-21-88
DATE

Marianne Farmer
DIVISION OF MOTOR VEHICLES

Mailed To Parties:

DEC 23 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ct

WITNESSES

FOR THE PETITIONER:

Lieutenant Edward Hepburn, Atlantic City Police
Rocco Bunodono
Phyllis Mistie Merlino
Deborah Wehrhan
Joseph P. Feriozzi
Joseph N. Merlino

EXHIBITS

FOR THE PETITIONER:

P-1 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-2 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-3 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-4 Photograph taken of Lawrence Merlino at an Atlantic City construction site on or about April 22, 1985

P-5 Photograph taken of Lawrence Merlino at an Atlantic City construction site on or about April 22, 1985

P-6 Photograph taken by Lieutenant Hepburn of Lawrence Merlino on the steel structure of construction at Resorts

P-7 Photograph taken by Lieutenant Hepburn of Lawrence Merlino on an Atlantic City construction site on April 22, 1985

P-9 Photograph taken by Lieutenant Hepburn of a motor vehicle registered to Lawrence Merlino parked at an Atlantic City construction site on or about April 22, 1985

P-10 Application submitted to the Board of Examiners for Construction Contractor License filled out by Rocco Bunodono

P-11 Account input record of the First Fidelity Bank

P-12 Memo from Bayshore Rebar of September 15, 1986, to Continental Insurance

P-12a Memo from Bayshore Rebar, dated September 15, 1986, to Continental Insurance Company

P-13 Memo of September 15, 1986, from Nat Nat, Inc., to North River Insurance Company

P-13a Original copy of a memo of September 15, 1986, from Nat Nat, Inc., to North River Insurance Company

P-14 State Grand Jury Indictment No. SGJ174-86-1(1)

P-15 1980 report of the Pennsylvania Crime Commission

P-16 1983 report of the Pennsylvania Crime Commission

P-17 1984 report of the Pennsylvania Crime Commission

P-18 Testimony before the United States Senate as to organized crime in America by Lieutenant Justin Dintino

P-19 Decision of the Casino Control Commission on Dkt. Nos. 82-EL-19 and 20

P-20 Final Order of the Casino Control Commission in OAL DKTS. CCC 1807-83 and CCC 1809-83 excluding Lawrence Merlino and Philip Leonetti from being present in licensed casino establishments

P-21 1985 report of the Pennsylvania Crime Commission

P-22 Indictment No. 142-85-5(1)

P-23 For identification only

P-24 Docket sheets in the Matter of the State of New Jersey v. Lawrence Merlino, SGJ 142-85-5(1)

P-25 Application for designation of an insurance company submitted by Nat Nat, Inc., in September 1986

P-26 Phone message left for Deborah Wehrhan concerning a call from Nat Nat

P-27 Note from Phyllis Mistie Merlino, dated September 15, 1986

P-28 Phone message with intent to cancel insurance for Nat Nat

P-29 Certificate of incorporation of Bayshore Rebar, dated December 13, 1985

P-30 Letter from Assistant Manager, First Jersey Bank, to whom it may concern, dated January 29, 1986

P-31 Transcript of sworn interview of Joseph Merlino

P-32 Documents of incorporation and dissolution in the state of Florida on behalf of Bayshore Rebar, Inc.

P-33 Settlement statement in connection with the sale of property at the Margate Towers

P-34 Mortgage between Scarf, Inc., and the Margate Towers Apartments

P-35 Deed between Scarf, Inc., and Nat Nat, Inc., and the application filed by Joseph Merlino

P36 Loan application of Joseph N. Merlino

P-37 Tax returns for Joseph N. Merlino for 1985

P-38 Tax returns for Joseph N. Merlino for 1986

P-39 Request for verification of employment by AmeriFederal Savings Bank

P-40 Memo dated March 10th from Lawrence Merlino to AmeriFederal Savings Bank
P-41 Corporate income tax return for Bayshore Rebar, Inc., for 1985
P-42 Bayshore Rebar checks signed by Phyllis Mistie
P-43 Bayshore Rebar checks signed by Joseph Merlino
P-44 Authorized payroll signatures of Bayshore Rebar
P-45 Bayshore Rebar checks signed by Joseph M. Merlino
P-46 Account deposit entries for Bayshore Rebar payroll account
P-47 Mortgage and loan application submitted by Joseph M. Merlino
P-48 Affidavit of Barbara Friese
P-49 1986 report of the Pennsylvania Crime Commission
P-50 Affidavit of Thomas Del Giorno

FOR THE RESPONDENT:

R-1 Certification of Joseph Feriozzi
R-2 Affidavit of Lawrence Merlino
R-3 Testimony by Thomas Del Giorno In the Matter of United States v. Scarfo, et al.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-32
OAL DOCKET NO. CCC 01795-88
REGISTRATION NO. 31716-21
ORDER NO. 88-47-5

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

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 30, 1988,

IT IS on this 12th day of January 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO . CCC 1795-88

AGENCY DKT. NO. 84-32

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
DONALD A. BENNETT,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Alexander J. Wazeter, Jr., Esq., for respondent (Joseph D. O'Neill, attorney)

Record Closed: October 3, 1988 Decided: October 26, 1988

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

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on February 10, 1984, alleging that Donald A. Bennett had been arrested and charged with filing false reports to law enforcement authorities, a violation of N.J.S.A. 2C:28-4, and with attempt to commit a theft, in violation of N.J.S.A. 2C:5-1 and conspiracy to commit a theft, in violation of N.J.S.A. 2C:5-2. The arrests occurred on November 17, 1983, and involved an incident which occurred on November 4, 1983, in which Mr. Bennett had filed a report with police and with the Allstate Insurance Company in which he alleged that his 1983 Ford Ranger pickup truck had been stolen. In fact, according to the allegations of the indictment which was returned against Mr. Bennett, he knew that his truck had not been stolen and had arranged instead for it to be taken by an associate so that he could reap proceeds of the insurance policy.

The complaint was forwarded for hearing before the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held before Administrative Law Judge Richard L. Voliva, Jr., on May 9, 1988, and Judge Voliva issued a Prehearing Order on June 6, 1988. The Prehearing Order set forth the issues for consideration at the hearing as follows:

> Whether Donald A. Bennett, respondent, violated N.J.S.A. 5:12-90 because of his conduct on November 17, 1983, as follows:
>
> A. Whether the respondent committed violations of N.J.S.A. 2C:5-2, conspiracy, and of N.J.S.A. 2C:20-3, theft of movable property in excess of $500, which are disqualifying offenses under section 86c(1), by means of section 86g.
>
> B. Whether the respondent's conduct establishes that he no longer possesses the requisite good character, honesty, and integrity, under section 90b, which incorporates section 89b(2) by reference.
>
> C. In the event the Division establishes a section 86c(1) disqualifier, the respondent has the opportunity to establish his rehabilitation, pursuant to section 90h.
>
> D. Whether, pursuant to sections 129 and 130, disciplinary action should be taken against the respondent's casino employee license no. 31716-21.

The matter was heard before Administrative Law Judge Jeff S. Masin on September 23, 1988, at the Glassboro Municipal Building. The record closed on October 3, 1988, following submission of additional character evidence.

EVIDENCE

The Division called Donald A. Bennett as its witness. Mr. Bennett acknowledged that in November 1983 he owned a pickup truck which he had rolled down a cliff causing $3,500 to $4,000 damage. Bennett was in a quandary as to whether to claim the damages from his insurance company or whether to fix the vehicle himself and absorb the costs. Apparently, he did not have the money available to make the repairs himself. A short time after the accident he was in conversation with a friend of his brother's who had an autobody business. This individual, a Mr. Hannah, advised Bennett that he could "take" the truck and Bennett could then file a claim with the insurance company claiming the truck to be stolen for the proceeds of the insurance policy. At that time, Bennett was 22

years old and living in his brother Leon's house in Vineland. Leon Bennett was 31. According to Bennett's testimony, he did file a claim with Allstate Insurance on the policy covering the vehicle and did file police reports indicating that the vehicle had been stolen. He was attempting to be paid for the truck. However, the scheme was uncovered and he was not paid.

Testifying on his own behalf, Mr. Bennett further explained his coming together with Hannah and Leon Bennett in the scheme to obtain the insurance proceeds. Bennett explained that after he was presented with Hannah's idea, he did not particularly like it, but agreed to the suggestion as he did not know what else to do. He had many bills and could not see how he was going to have the truck repaired. He was "looking for the cheapest way out."

When the incident was uncovered, the respondent and his brother and Mr. Hannah were all charged. Hannah was convicted at trial. Bennett confessed his involvement. At hearing he acknowledged that he knew that what he was doing was wrong, although he went along because of the pressure of the circumstances. He insisted that he would never be involved in any theft ever again.

After his indictment, he was placed on pretrial intervention (PTI) and was required to perform community service for about six months. Since successfully completing the PTI program, he has had no other arrests.

At the time of the incident in 1983, Bennett was employed at Harrah's Casino. After the situation was resolved, he left for Pheonix, Arizonia, where he worked for nine months as an electrician. He returned to the Cumberland County area and attended Cumberland County College and then transferred to Stockton State where he has a total of 60 credits in oceanography. He became employed as a seasonal dealer on a permanent part-time basis at Harrah's Casino as of June 27, 1988. He had a back injury as of May 1, 1987 and was told to take substantial time off from his employment. At the time he could not do so because he needed money for school. Eventually, the pain became excessive and he suffered from excessive absenteeism. After being let go by Harrah's he was employed at the Showboat Casino Hotel. He advised Showboat and Harrah's of the charges and the outcome of them when he applied for employment at each of the facilities.

The respondent explained that since the incident occurred five years ago, he has matured greatly. He realizes the mistake he made and would never again conduct himself in such a manner. He has a good job, has continued his education and straightened out. He has been involved in helping as a volunteer at the American Legion Post in Millville, as attested to by a character reference letter submitted on his behalf from representatives of the Nabb-Leslie Post 82 - American Legion.

On cross-examination, the witness acknowledged that at the time that he was contacted by the police concerning his allegedly stolen vehicle, he did contact Mr. Hannah to let him know that the police were on to something and advised Hannah that he should attempt to cover up whatever occurred.

Leon R. Bennett, brother of the respondent, testified on his brother's behalf. He acknowledged his involvement in the incident. Leon Bennett was also placed on pretrial intervention which he successfully completed. He is nine years older than his brother and they have always been very close. Their father was killed in 1972 and Leon has been a father figure to his brother, although he was overseas in the Navy when his father died and it was two or three years before he came home.

Leon testified that at the time of the incident his brother had just begun working in the casino and was under pressures. He is now much more focused on the future, has gone to school, has recognized his mistake, has improved his education, and has "paid a heavy price." In his view, Donald is remorseful and regretful concerning the situation and he, Leon, shares these feelings concerning his own involvement. He acknowledged that he had "steered his brother in the wrong direction."

The police reports presented as evidence by the Division essentially confirm the story explained by the Bennetts. There is no real dispute of the facts concerning the 1983 activity.

Mr. Bennett presented character reference letters on his behalf. These included the previously mentioned reference from the American Legion representatives, as well as a letter from Joseph Hibbs, Dean of Student Affairs at Cumberland County College. Mr. Hibbs indicates his awareness of Donald's involvement in the insurance fraud situation and states that "Don clearly recognizes the mistake he made and very much regrets the

incident. As a result, he has grown and matured significantly over the last several years." He continues "Don Bennett is a fine individual of basically good character."

Ted Jasinski, who has worked with Bennett in the casino industry since 1982 as a co-worker and supervisor, testified that he "found him to be dependable, honest and trustworthy." Jasinski's letter also reflects his knowledge of Donald's involvement in the fraud incident and states that it was "merely an error on his part and in no way reflects the true nature of his character." . . . "He has shown remorse and in my opinion has learned well enough from this lesson to stay clear from these and any other similar situations in the future."

An additional character reference letter from Kenneth K. Cleveland, a pit boss at the Showboat Casino, reflects Mr Cleveland's view of Donald as "reliable and trustworthy."

DISCUSSION

It has been five years since Donald Bennett engaged in the attempt to obtain funds from his insurance company for a truck which was in fact not stolen. Obviously, that incident was a serious mistake on Mr. Bennett's part. It reflected an intention to obtain monies which he knew he was not entitled to. Apparently at the time, Mr. Bennett found himself in a predicament because of the damage which he had done to his vehicle and took the wrong way to attempt to resolve his difficulty. It is probably fair to say that he was guided in part in this error by his older brother, who had apparently assumed a father-figure role for the nine-year younger Donald.

Since the successful completion of his pretrial intervention program, Mr. Bennett has, from all evidence, changed his position in life considerably. He has obtained a substantial college education, he has traveled, he has again worked in the casino industry in a successful fashion, and he has generally matured.

Based upon the evidence presented by the Division pursuant to N.J.S.A. 5:12-86g, it appears that Mr. Bennett did engage in conduct in 1983 which constituted conspiracy and attempted theft, in violation of N.J.S.A. 2C:5-1 and 5-2, and that he had also filed false reports with law enforcement authorities, in violation of N.J.S.A. 2C:28-4. His

conspiracy and attempt to commit theft violations constitute automatic disqualifying offenses pursuant to N.J.S.A. 5:12-86c. However, the evidence presented indicates that his criminal involvement was of a limited and aberrational nature, that it was engaged in while he was still relatively youthful, that his social situation at the time was such that he was under the substantial influence of a brother who misled him into agreeing to something which Mr. Bennett may not have been entirely certain he should have been involved in, and that as a result of the incident, while fortuitous for Mr. Bennett, no one was injured physically or financially. In addition, it appears that since the incident, Mr. Bennett has conducted himself in a proper fashion as a good citizen, has successfully completed his PTI requirements, and has achieved status as a productive citizen. Under these circumstances, I **FIND** that he has rehabilitated himself from the disqualifying aspects of the prior incident in accordance with the standards set forth in section 90h of the Casino Control Act. I further **FIND** that he has the requisite good character, honesty and integrity required by section 90b, incorporating the requirements of section 89b(2). Under the circumstances, the application by the Division for revocation of his casino employee license is denied.

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

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

October 26, 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

10-27-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 31 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

P-1 Police Report of November 1, 1983
P-2 Police Report of November 15, 1983
P-3 Police Report of November 17, 1983
P-4 Statement of Donald A. Bennett
P-5 Undated Police Report
P-6 Indictment, State of New Jersey v. Donald A. Bennett
P-7 Order of Dismissal

R-1 Letter from Robert Gordon (Nabb-Leslie Post 82 American Legion)
R-2 Letter of September 20, 1988, from Joseph Hibbs
R-3 Letter of September 30, 1988 from Ted Jasinski
R-4 Letter of September 29, 1988, from Kenneth A. Cleveland

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-97
OAL DOCKET NO. CCC 5052-88
LICENSE NO. 52674-22
ORDER NO. 89-2-7

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. WARNER L. BERRY, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989,

IT IS on this 24th day of January 1989, ORDERED that the initial decision is modified as follows:

(1) to make clear that the basis for disqualification is, as the administrative law judge states on page 9, N.J.S.A. 5:12-86(c)(1), by virtue of Berry's commission of promoting gambling, third degree, and conspiracy to promote gambling, third degree, both of which are listed offenses contained in N.J.S.A. 5:12-86(c)(1). However because Mr. Berry was not convicted of these charges in criminal proceedings, reference should also be made to N.J.S.A. 5:12-86(g);

ORDER NO. 89-2-7

IT IS FURTHER ORDERED that the casino employee license held by Warner L. Berry is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5052-88
AGENCY DKT. NO. 88-97

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
WARNER L. BERRY,
Respondent.

Norma L. Stancil, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Jack Feinberg, Esq., for respondent (Mairone, Biel, Gould, Zlotnick, Feinberg & Griffith, attorneys)

Record Closed: November 17, 1988 Decided: November 28, 1988

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

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on October 8, 1987 seeking to have the Commission issue an order revoking the casino employee license held by Warner L. Berry. The basis of the proposed action was Mr. Berry's alleged involvement in an illegal gambling operation. The complaint specified that Mr. Berry had been indicted by the Cape May County Grand Jury in Indictment No. 87-07-0223-I, filed on July 22, 1987, for committing the offenses of conspiracy, N.J.S.A. 2C:5-2, and promoting gambling, third degree, N.J.S.A. 2C:37-2.

Mr. Berry requested a hearing on the proposed suspension. His casino employee license was suspended by the Commission on a temporary basis pending a plenary hearing. The order suspending the casino employee license was issued by the Commission on November 13, 1987. The matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Subsequent to transmittal to the OAL, a prehearing was held before Honorable Stephen W. Thompson on August 22, 1988. A Prehearing Order was issued on September 13, 1988. That document set forth the issues to be considered at the hearing as follows:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:37-2 and N.J.S.A. 2C:5-2.

B. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:37-2, and N.J.S.A. 2C:5-2, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

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

D. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held before Administrative Law Judge Jeff S. Masin on November 17, 1988 at the Galloway Township Municipal Court. The record closed on that date following the conclusion of the hearing.

EVIDENCE

As evidence in support of its contentions, the Division of Gaming Enforcement presented the indictment returned by the Cape May County Grand Jury which charges that Warner L. Berry, a/k/a Chico, and Nicholas J. Marotta, a/k/a Nick, had between January 3, 1987 and approximately January 25, 1987 conspired together for the purpose of engaging in conduct which would promote gambling, specifically bookmaking, with respect to National Football League play-off games. The

indictment asserted that Berry and Marotta received incoming telephone calls at Mr. Berry's residence which were then "call forwarded" to two other telephones located at the residence of Mr. Marotta. In addition, the indictment set forth numerous overt acts undertaken in furtherance of the conspiracy and also charged in Count Two that the defendants had engaged in the crime of promoting gambling in the third degree in that they had accepted five or more bets totaling more than $1,000 on January 25, 1987.

Detective Robert F. Walker of the New Jersey State Police Intelligence Bureau testified concerning his involvement in the investigation of the Marotta-Berry operation. Detective Walker was qualified as an expert in gambling operations. He testified that beginning on November 17, 1986 he received information from Detective Serrano of the New Jersey State Police who had received information from a confidential informant concerning illegal sports bookmaking in Cape May County. Serrano had been told by the confidential source of two telephone numbers in Cape May County which could be called for placing bets. Detective Walker investigated and determined that the telephone numbers were unpublished. He then determined through court order that the numbers were listed to W.L. Berry who lived at 106B Seaview Court in North Wildwood. This individual was also known as Chico and was a bartender at Trump's Plaza. In addition, he learned that another individual involved was Nicholas (Nick) Marotta, a bartender at Grande's Cafe in Wildwood.

Detective Walker obtained a court order for the installation of a dial recorder to record incoming and outgoing calls, the time and duration of such. This did not involve the monitoring of the conversations themselves. As a result of the installation of the dial recorder, it was learned the telephone calls incoming to the Berry telephones were being "call forwarded" to 215B West 4th Street in North Wildwood, the home of Nicholas Marotta. These telephones at Mr. Marotta's home were in fact subscribed by a Philadelphia individual named Zucotta who had been previously arrested in gambling investigations.

According to Detective Walker's expert opinion, the procedure being utilized by Messrs. Berry, Marotta and the Philadelphia individual were all in a pattern familiar to bookmaking operations where the bookmaker will get some unsuspected individual to have telephones which will then receive calls from individuals seeking to place bets and will "call forward" the calls to another location.

On January 23, 1987, the investigators obtained a search warrant from Honorable Arthur Guerrera, a Superior Court judge in Atlantic County. They searched Berry and Marotta's residences. They first searched Marotta's. When they arrived and looked into the premises they saw Mr. Marotta seated at a table with two telephones in front of him, a calculator, papers and a pot of water. Marotta appeared to be answering the phone and writing on the papers. The investigators then forced the door and at this point Mr. Marotta placed the papers into a pot of water. The paper immediate dissolved as it was apparently rice paper, a paper often used by bookmakers. Detective Walker began answering the telephone. January 23, 1987 was the date of the Super Bowl. For approximately one hour between slightly before 5:00 until slightly before 6:00, Detective Walker answered the phone. The people calling asked for Nick or then Chico. Walker advised the callers that he was the individual from Philadelphia. The callers would ask for the "line" on the Super Bowl and then would place bets. Thirty-three bets totaling $3,555 were received during that one-hour period.

Walker testified that the dial number recorder had been put in place sometime slightly after Christmas until January 26, 1987. On game days, approximately 50 to 75 calls were received during the two hours before the event began.

When the police raided Mr. Berry's home they found two telephones and instructions on how to forward calls from the phones to Mr. Marotta's residence. They also found several slips of yellow paper with notations and telephone billings which showed the letters "T", "C", and "N" next to certain long distance calls. The "N" calls were interpreted as being calls made by Marotta to Zucotta.

On January 11, 1987, prior to the raid on Super Bowl Sunday, Detective Walker listened in on telephone calls made by the confidential source to Mr. Berry's phone number. The calls were forwarded to Marotta's premises. One of the calls was taken by Nick and the other by Chico, that is Berry. Wagers were placed and the detective heard the "line" being given on the wagers made. Chico took one of the bets. The police had conducted surveillance on Berry's premises prior to the phone calls being made and seen Berry leave and go to Marotta's house. They then checked after the calls were made and found that Berry was still at Marotta's premises.

Detective Walker testified that it was the belief of the investigators that Mr. Marotta was laying off bets to Mr. Zucotta. The operation had apparently only begun during the 1986-87 NFL season.

According to the information which Detective Walker received from Detective Serrano, the confidential source had obtained the Berry telephone numbers from a casino dealer at the baccarat pit at Atlantis. This individual, Theresa D'Amore, previously had lived with Mr. Berry, although according to his testimony they were not living together at the time that Berry was involved with Marotta's gambling operation.

On cross-examination, Detective Walker acknowledged that bookies will often use bettors or some other "unknowns" to subscribe the telephones which are then forwarded to the bookie's premises. The bettors often will be used as a means of working off their debts to the bookie. The detective acknowledged that he had only overheard one bet given to Chico. However, he noted that Detective Serrano had heard others. Finally, the detective noted that he was unaware of whether or not Mr. Berry had cooperated with the authorities after the arrests had taken place.

On redirect, Walker observed that most of the callers whose calls he answered at Marotta's home had first asked for Nick and then for Chico. It was the detective's belief that Mr. Marotta controlled the Cape May portion of the Zucotta operation.

Warner L. Berry testified as a witness for the state. Mr. Berry is presently unemployed, having been laid off from a non-casino premises facility on September 8, 1988 when that nightclub closed down for renovations. He had previously been employed at Trump Plaza beginning May 7, 1985 until he was suspended. He first met Mr. Marotta when he came to New Jersey from Washington, D.C., in 1977 and Marotta befriended him.

Mr. Berry acknowledged that he had been convicted of misdemeanor offenses in Washington, D.C., in 1973 and 1977 for possession of diet pills (ludes). He also acknowledged that he had repaid New Jersey unemployment $652.49 due to an unemployment overpayment. It was stipulated by counsel that he received some monies while he was employed. According to Berry, he reported his employment by sending in a green slip as he was required to do. However, he received checks. The parties did not stipulate that the receipt of monies by Mr. Berry while receiving unemployment between march 14, 1982 and sometime in April 1982 had resulted

from fraud. The deputy attorney general contended that such had occurred, however, she had no certified documentation from the Division of Unemployment, nor any witnesses, who could interpret the uncertified computer printout which she had at the hearing. It was not clear whether in fact it had ever been alleged that Mr. Berry's receipt of funds had been fraudulent. In fact, it appears that a civil judgment was entered against him and he paid that judgment. Although it may be that the Division initially contended that fraud had occurred, in the absence of a witness or the appropriate paper work, no conclusions are reached in connection with any alleged fraud.

Mr. Berry acknowledged that his phone bill did contain charges for long distance calls made by Mr. Marotta as well as by his girlfriend, Theresa (Toni) D'Amore. He received payment back for the amounts of these long distance calls.

According to Mr. Berry, he was a friend of Mr. Marotta who had helped him out with a place to stay and an introduction to Atlantic City when he, Berry, had come from Washington, D.C. Subsequently, prior to the incidents which are the subject of this proceeding, Mr. Marotta approached Berry on several occasions and advised him that he was in financial difficulty and needed some "help." Marotta had a printing business and was working as a part-time bartender. He was going through a divorce and was having serious financial difficulties. Mr. Marotta requested that Mr. Berry let him use his residence as a place for placement of telephone numbers which would be "call forwarded" to Mr. Marotta. Mr. Berry was aware that Marotta was a bookmaker. He agreed to allow Marotta to make use of his premises after Marotta had persisted in his requests. Each time that the phones were used, Berry received $20 for the use of his apartment. He claimed that he did not share in any of the proceeds or profits of the gambling enterprise. He did acknowledge however that he had taken bets on the phone at Mr. Marotta's premises and that Marotta had come to his home on occasion and answered the phones from his home. Berry acknowledged that he knew that what was going on was illegal, but he agreed to participate purely out of friendship after Marotta "kept asking." Although he was hesitant at first, he finally "gave in."

Mr. Berry received pretrial intervention with respect to his indictment in Cape May County. He successfully completed this, performing his required community service. He also agreed to cooperate with the State Police, met with them and gave a statement.

Mr. Berry is not married. Theresa D'Amore is still his girlfriend, although he does not reside with her. He has no dependents. He finds employment difficult to obtain because the type of job which he does, bartending, is a seasonal operation in the Atlantic City and Wildwood area. His father, girlfriend and unemployment benefits have helped him out during his period of unemployment.

Mr. Berry denied that any of the gambling activity in which he engaged occurred on casino premises. He never gave out the number to any casino personnel, etc. He was not living with Theresa D'Amore at the time that this operation was in effect, although he had been with her prior to that time and she was aware of Mr. Marotta's activity, although not involved in them.

The respondent is active in his church. He has never been in any difficulty with his casino employers, never having been disciplined.

DISCUSSION

The Division of Gaming Enforcement contends that the continued licensure of an individual who, by his own admission, was engaged in bookmaking operations would be inimical to the policies of the Casino Control Act and the interests of the gaming industry and that the nature of Mr. Berry's conduct, although it was not the subject of criminal prosecution, indicates that he engaged in criminal activity of a nature which would constitute an automatic disqualifying offense pursuant to the Casino Control Act. On both of these counts, I **CONCLUDE** that the Division's suggestions are correct.

Initially, while counsel for Berry attempted to limit the significance of Berry's involvements with this bookmaking operation, suggesting that he was merely helping out a friend by allowing him to use his home as a place for telephones, it is quite clear from Mr. Berry's own admissions that he not only let the phones be in his premises, but he also took bets, allowed Mr. Marotta to take bets in his home, and went to Mr. Marotta's home where he took bets. This testimony confirms the validity of Detective Walker's testimony as to overhearing "Chico" take a bet from a confidential informant on January 11. Mr. Berry may not have been sharing in the profits of the operation to any extent, and may well have only received the limited amounts of money which he suggests. However, whether he was paid for his efforts or not, he was part and parcel of the illegal gambling operation, participating knowingly in illegal bookmaking which he must have suspected was expected to

produce a profit for others, if not for himself. Mr. Berry's activities did involve the promotion of gambling and it is quite clear from the testimony of Detective Walker, which I FIND believable, that just on Super Bowl Sunday itself bets numbering more than five and well in excess of $1,000 were received by the operation.[1] Thus, Mr. Berry's activities certainly involved the promotion of gambling and he certainly conspired with Mr. Marotta to engage in this gambling operation. In fact, he does not deny his involvement, although he perhaps suggests it should not be viewed too seriously.

The New Jersey Legislature has made it quite clear that entry into and retention of the permission to participate in the legal gambling industry in New Jersey is a privilege which is limited to those who meet specific qualifications. N.J.S.A. 5:12-1b.(8). The burden placed upon a licensee includes the necessity of continually establishing the necessary good character, honesty and integrity required for licensure by clear and convincing evidence. In addition, where one participates in activities which constitute criminal activity, whether prosecuted or not, where the activity is of the nature of a disqualifying offense as set forth in section 86c(1) of the Act, licensure is not permitted and must be revoked unless rehabilitation is established by clear and convincing evidence. Here, Mr. Berry's offense occurred in 1987. Although he successfully completed pretrial intervention, and while it is clear that the State in connection with criminal matters has determined that certain types of offenses where committed by first offenders should not result in a criminal record where the individual can successfully complete a PTI program, with respect to the separate issue of licensing to participate in the legal gambling industry, the nature of Mr. Berry's conduct is a most serious matter. The people of this state have legalized certain limited forms of gambling. As of this date, they have not agreed to license sports betting. Here, Messrs. Marotta, Berry, and whatever compatriots they may have had were promoting and engaging in illegal sports betting which no doubt was intended to produce profits for those who were willing to defy the law. Since the very basis of legal casino gambling is its highly regulated nature and form, it is certainly opposed to the interests of the Casino Control Act to permit those who would engage in illegal gambling to participate. Promoters of illegal gambling have no business in the legal gambling industry.

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[1] N.J.S.A. 2C:37-2.6 grades this level of activity as a crime of the 3rd degree.

Mr. Berry may well have recognized the error of his ways. It is quite possible that he will never again engage in this kind of conduct. Prior to this incident, he had been licensed despite his relatively minor drug incidents in Washington, D.C. However, following this incident, I **CONCLUDE** that he cannot retain his license. While perhaps sometime in the future he will have proven his law-abiding nature and good character, and the passage of time will permit some security in a decision that he is rehabilitated, at this early date I cannot conclude that Mr. Berry has met the heavy burden of establishing his good character, honesty and integrity or his rehabilitation from the effects of his disqualifying conduct to the significantly high level of clear and convincing evidence required by the Legislature. As such, I **CONCLUDE** that Mr. Berry's casino employee license must be revoked because of his involvement in a conspiracy to promote illegal gambling and promoting gambling, disqualifying offenses pursuant to N.J.S.A. 5:12-86c(1). I **CONCLUDE** that he has failed to established by the requisite degree of proof either his good character, honesty and integrity and/or that he has rehabilitated himself to the extent necessary to qualify for licensure.

Therefore, it is **ORDERED** that Mr. Berry's casino employee license be revoked.

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

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

November 29 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

11-30-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 1 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For petitioner:

P-1 through P-3	No exhibits offered
P-4	New Jersey State Police Supplementary Investigation Report of Detective John C. Baughman
P-5	New Jersey State Police Supplementary Investigation Report of Detective R. Bernard
P-6	Indictment 87-07-0223-I
P-7	First Postponement Order
P-8 and P-9	No exhibit offered
P-10	Personal History Disclosure Form-2A
P-11	No offered
P-12	Employee License Renewal Application - Renewal Year 1987
P-13	For identification only - Computer printout from Division of Unemployment

For respondent:

R-1	Community service conditions and release of information form, dated January 14, 1988
R-2	Letter of March 4, 1988, from Thomas B. Naglee, P.O., Community Service Coordinator, with attached document indicating completion of 35 hours of public service
R-3	Progress report, Community Service Program
R-4	Order of Dismissal Under Rule 3:28, dated May 3, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-14
APPLICATION NO. 1536-70
VENDOR I.D. NO. 09767
OAL DOCKET NO. CCC 8178-87
ORDER NO. 89-5-9

APPLICATION OF EDWARD BERSHAD COMPANY
t/a PENN VENDING COMPANY — ORDER
FOR A CASINO SERVICE INDUSTRY LICENSE

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge recommending that the application be granted having been filed with the Casino Control Commission; and exceptions and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 1, 1989,

IT IS on this 2nd day of February 1989, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that the application of Edward Bershad Company, t/a Penn Vending Company, for a casino service industry license is denied for the reasons stated on the record of the Commission's February 1, 1989, public meeting, which record is incorporated herein by reference; and

IT IS FURTHER ORDERED that Penn Vending Company is prohibited from engaging in any future business with any

casino licensees or employees or agents acting on behalf of the casino licensee until further order of this Commission.

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Penn Vending Company and/or Alan or Ronald Bershad, individually, and casino licensees or employees or agents acting on behalf of casino licensees be terminated within fifteen (15) days of the date of this order; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8178-87
AGENCY DKT. NO. 88-CSI-14

THE APPLICATION OF EDWARD BERSHAD COMPANY, T/A PENN VENDING COMPANY FOR A CASINO SERVICE INDUSTRY LICENSE

Mark H. Sandson, Esq., for the petitioner Edward Bershad Company, t/a Penn Vending Company (Hankin, Sandson & Sandman, attorneys)

Richard Morrissey, Deputy Attorney General, for the respondents (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 15, 1988 Decided: September 29, 1988

BEFORE **RICHARD MURPHY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Edward Bershad Company, t/a Penn Vending Company (applicant) seeks to be licensed by the Casino Control Commission (Commission) as a casino service industry, pursuant to N.J.S.A. 5:12-92(c), in order to provide non-gaming services to casinos in the form of video games. As of May 1987, the applicant had provided over $300,000 in vending services to casinos without being cited for any violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. or regulations, N.J.A.C. 19:40-1.1 et seq. The Division of Gaming Enforcement (Division) objects to the issuance of a casino service industry license to the applicant because of undisputed evidence that the Edward Bershad Company made protection payments to members of the Philadelphia Police Department after officers illegally requested monies to allow the company to continue to operate at various locations in Philadelphia. The

officers were subsequently indicted in a Federal Court and convicted with the assistance of the applicants immunized testimony. The issues to be resolved here are (1) whether the applicant is statutorily disqualified because of these protection payments under N.J.A.C. 5:12-86(g), 92(d); (2) whether the applicant may show rehabilitation from any such disqualification, and; (3) whether the applicant has established its qualifications under the Commission regulations, including the requirement that it establish by clear and convincing evidence its reputation for good character, honesty and integrity pursuant to N.J.A.C. 19:43-1.3. For the reasons discussed below, this opinion **CONCLUDES** that the application should be **GRANTED.**

PROCEDURAL HISTORY

The Division interposed its objection to licensure on August 12, 1987, and counsel for the applicant requested a hearing on November 25, 1987. The matter was transmitted to the Office of Administrative Law for hearing as a contested case on December 10, 1987. The prehearing conference was held on January 22, 1988, before the Honorable Stephen W. Thompson, ALJ, and an order setting forth the procedure and issues was entered on February 8, 1988. The hearing, scheduled for April 27, 1988, was adjourned due to the unavailability of one of the applicant's witnesses. The matter proceeded to hearing on May 25, 1988, in Mt. Ephraim, New Jersey and the parties requested an opportunity to review the transcript and to submit briefs as to the legal issues. The applicant's brief was filed on August 1, 1988, and the Division submitted a letter memorandum on August 2, 1988. The applicant replied on August 15, 1988, and the record was deemed complete on that date and closed.

FACTS

There is no dispute as to the material facts necessary to decide this matter. On May 7, 1984, the Edward Bershad Company t/a Penn Vending Company, which is owned and operated by Ronald and Allan Bershad, applied for a casino service industry license under N.J.A.C. 5:12-92(c) in order to engage in the business of providing services to Atlantic City casino/hotels of a non-gaming nature. The Edward Bershad Company currently operates video arcades or game rooms in six Atlantic City casino/hotels and between June 1986 and May 1987 made approximately $370,821 in non-gaming business with the casino industry. During that time, the applicant has not been cited for any violations of the Casino Control

Act for regulations and there has been no evidence submitted of any problems or complaints against the applicant in the course of its Atlantic City business. The sole basis for the Division's objections to the application is payments of approximately $33,500 made by Ronald and Allan Bershad, and a former partner, during 1981 and 1982 to members of the Philadelphia Police Department, who had approached the company and requested payments for allowing the applicants to keep their full line of vending machines, including video poker machines, at various locations throughout Philadelphia. Ronald and Allan Bershad do not dispute that these payments were made, but claim that they were made only in response to a demand and implied threat to the business's well-being by members of the Philadelphia Police Department, who were subsequently indicted for this and related offenses. The Bershads were granted immunity after voluntarily cooperating with the federal authorities and were not charged with any criminal violations.

The Bershads also offered the following background of their company, as well as the fateful payments made by them in 1981-82 to Philadelphia police officers. The Edward Bershad Company, trading as the Penn Vending Company, was formed by Edward Bershad, father of the current owners Ronald and Allan, in 1948 and initially engaged in the business of distributing cigarettes and cigarette machines. The sons, Ronald and Allan, later started working with their father and the company branched out into the area of juke boxes, and a line of food vending machines, the latter of which were later abandoned in 1977. The next year, 1978, Penn Vending merged with another company, Regal Vending, which was engaged in a similar business and run by one Allan Simons. The new company, Penn-Regal Vending, which was formed to lower operating expenses for both companies, operated video poker machines, as well as cigarette machines and juke boxes at various locations in the Philadelphia area. These video poker machines were permitted by Pennsylvania state law, but patrons were prohibited from betting on the games. Allan Bershad was aware that use of video poker machines for gambling was, at best, a "gray area" in Pennsylvania and was aware that a number of video poker machines, including some owned by Penn-Regal Vending, had been seized by the Philadelphia Police Department (R-3, 12-13, R-6, 136T102, 103).

In the late summer of 1981, Allan Simons, the Bershad's partner in Penn-Regal Vending Company, advised Allan Bershad that he had been approached by Inspector John DeBenedetto of the Philadelphia Police Department who advised that Penn-Regal would have to make payments to the police department of $100 per month for each video poker machine that the company wished to keep in

operation at various locations (T98-100). Simons also advised the Bershad brothers that if payments were not made on the video poker machines, the company would not be allowed to keep any of their vending machines or amusement games at a location and thus would loose the account (T99; R-3, 15). Loss of these accounts would have caused the company a third of its business, approximately $400,000 (T104). Neither Allan nor Ronald Bershad spoke to Inspector DeBenedetto concerning this demand for payments and neither raised this matter to any other state or federal authorities. The Bershad brothers discussed DeBenedetto's demand for payment and decided, they claim with some reluctance and nervousness, to go along with the payment plan out of concern for the economic well-being of their business and other adverse consequences if they refused to cooperate. Allan Bershad gave the following testimony:

> Q: Now, you were describing the reasons that you used at the time for these payments. . . .
>
> A: It's just that we were nervous at the time that it happened. And it was a business decision and a selfish decision, I guess, that I was nervous for myself and my family.
>
> At that time, I think I had four children. And just being in the city of Philadelphia, with the reputation of the police department, we were nervous about it and we decided to go ahead and do it.
>
> Q: Were you afraid that you would be physically abused potentially?
>
> A: Yes. (T81, 8-22)

Allan Bershad conceded that his concern with physical harm was not based on any specific statements made by Inspector DeBenedetto but was part of the possible "other consequences" that would follow from failure to make payments as demanded (T101-102). Before the payments began, two of Penn-Regal's video poker machines were seized by the Philadelphia Police Department (T102-103). After Penn-Regal began to make payments to DeBenedetto, which were handled by Allan Simons, the company doubled the number of video poker machines installed from some 20-25 to 50-55 machines. Although Allan Bershad denies having discussed the matter of payments with DeBenedetto, which steadily increased during the period between November 1981 through November 1982 (R-6, 131), he did speak to the inspector on at least one occasion when he had a problem with a location that wanted a poker machine removed and stated that, after calling the inspector, he never heard from that customer again (T106, 4-13). The payments

were made by Allan Simons on a monthly basis and dually recorded by Allan Bershad as non-deductible business expenses which reached a total of $33,000.

The payments to the Philadelphia police stopped in November 1982, when the Federal Bureau of Investigation advised the Bershads that the matter of the payments, among other abuses of police authority in Philadelphia, were under federal criminal investigation. Allan Bershad cooperated voluntarily with the FBI investigation, without consulting with his attorney and stated that he was grateful and relieved that the FBI had intervened (T82). He was later given testimonial immunity and no charges were filed against either him, or his brother Ronald, who was responsible for accounts outside of Philadelphia and played a more minor role in the payments to the Philadelphia police. Inspector DeBenedetto, among other officers, was indicted in federal court for obtaining $33,500 not lawfully due him from "a representative of Penn-Regal Vending Company, with the consent of this representative, which consent was induced under the color of official right" (R-5 at 23). The indictment also cited DeBenedetto and other members of the Philadelphia Police Department with shaking down a number of businesses in Philadelphia including illicit operations such as massage parlors, as well as lawful operations like Penn-Regal Vending Company. Allan Bershad also testified in the federal trial against DeBenedetto (R-6). After being contacted by the FBI, Allan Bershad dissolved his partnership with Allan Simons, and states that he had intended to do this prior to the intervention of the federal authorities (T84 at 20). At the hearing, Allan Bershad stated that there was a point in making the payments when he knew that it was not proper, but that he "didn't know who to go to for being extorted by the police department" (T82, 13-16). He also gave the following answers as to why he thought his payment of money to the police was wrong:

> A: The only reason why I thought it was wrong was, I was being approached for giving the money for something that I wasn't doing wrong.
>
> Q: Well, you didn't think you were bribing them, did you?
>
> A: No. I mean, for operating the video poker machines. That's what got me nervous.
>
> Q: So you felt that what you were doing was appropriate and right, in other words, appropriate in running a business.
>
> A: It was a business and personal decision. I knew that I should never have given the money, but I was afraid that if I didn't give it, what the consequences would be.

Q: Why did you think you shouldn't give them money?

A: Well, I was giving money for something to allow me to operate my business.

Q: But when you say it was wrong to give them money, do you mean that it was wrong because you were the victim?

A: Of the police asking me for money, yes, I was the victim that way. (T113-114)

The Bershads also offered the expert testimony of Norman Greenspan, an attorney who had represented Allan Bershad in the federal matter of the payments. Greenspan offered his opinion that Bershad's actions in making payments to the Philadelphia police in response to a demand for money did not violate federal or Pennsylvania law. Greenspan also testified that Allan Bershad cooperated fully and freely with the federal investigation and was offered immunity without have to request it. The Division relied on an affidavit by one Anthony J. Wzorek, an assistant district attorney in the Philadelphia District Attorney's office, concluding that Allan Bershad's actions in making payments to the Philadelphia Police Department in 1981 through 1982 constituted a violation of 18 Pa. C.S.A. §4701 - bribery of public officials. The Bershads also offered documentation establishing that the corporation is in good standing in Pennsylvania and is financially sound (P-1 to P-5). As indicated, the Division rests solely on the applicant's admitted payments to the Philadelphia police as described above and cites no complaints or violations alleged against Penn Vending during the course of its business dealings with casino/hotels since 1983.

On the issue of reputation for good character, honesty an integrity, the applicants also offered testimony of several individuals, including a rabbi, who had known them for a number of years and found them to be persons of good and honest, as well as generous character.

ISSUES

The issues as set forth in the prehearing order are:

(1) Whether the Edward Bershad Company t/a Penn Vending Company as well as its owners committed acts which constitute a statutory disqualifyer, pursuant to N.J.S.A. 5:12-86c as incorporated within Section 92d despite the fact that such acts were not prosecuted in the criminal

courts of the state, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:2C-1 et seq., Bribery and Corrupt Influence; and

(2) Whether the Edward Bershad Company t/A Penn Vending Company is entitled as a matter of law to show rehabilitation for conduct which statutorily disqualifies it from licensure, and, if so, whether the company can affirmatively demonstrate rehabilitation pursuant to the Casino Control Act;

(3) Whether the Edward Bershad Company can show by clear and convincing evidence that it possesses the requisite good character, honesty and integrity for licensure as a casino service industry pursuant to N.J.S.A. 5:12-92d and N.J.A.C. 19:43-1.3(c).

ARGUMENTS AND CONCLUSIONS

(1) Statutory disqualification under 86g

The applicant argues that Penn Vending is not statutorily disqualified from licensure as a casino service industry, pursuant to N.J.S.A. 5:12-92c and d and that, given the circumstances of this case, it should be licensed. Penn Vending claims that its conduct was not prosecutable under N.J.S.A. 2C:27-1 et seq., concerning bribery and corrupt influence, because the payments made to the Philadelphia Police were intended to keep the police from removing lawful amusement machines thus intended to prevent the police from doing an unlawful act. In addition to arguing that Penn Vending could not have been prosecuted for bribery, the applicant maintains that N.J.S.A. 5:12-92(d) provides that a casino service industry licensed "may" be denied to an applicant disqualified under N.J.S.A. 5:12-86, but that this disqualification is not automatic. Thus, the applicant is entitled to licensure if it can, notwithstanding the disqualifying offense, establish reputation for good character, honesty and integrity by clear and convincing evidence under N.J.A.C. 19:43-1.3(c).

The Division argues that the conduct of the Bershad's clearly falls within the proscriptions of N.J.S.A. 2C:27-2, concerning bribery in official and political matters and that the applicant is therefore automatically disqualified from licensure under N.J.S.A. 5:12-86c,g and N.J.S.A. 5:12-92c, d. The Division specifically notes that it is no defense to the charge of bribery to claim that it was the result of conduct by another constituting theft by extortion or coercion. N.J.S.A. 2C:27-2(d).

I agree with the Division that the conduct of the Bershad's, though not prosecuted, constitutes an offense under N.J.S.A. 2C:27-2 and thus comes within the reach of N.J.S.A. 5:12-86c, notwithstanding the absence of any prosecution, as provided in N.J.S.A. 5:12-86g. The bribery statute provides that:

> [a] person is guilty of bribery of he directly or indirectly offers, confers or agrees to confer upon other, or solicits, accepts or agrees to accept from another: . . .
>
> [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 performance of official duties. Purposes of this section 'benefit as consideration' shall be deemed to mean any benefit not authorized by law. . . In any prosecution under this Section of the act or who offered, conferred or agreed to confer, or who solicited, accepted or agreed to accept the benefit, it is no defense that he did so as a result of conduct by another constituting theft by extortion or coercion or attempt to commit either of those crimes . . . .N.J.S.A. 2C:27-2.

The applicant characterizes itself as a victim of extortion and thus argues that it is not liable to prosecution for bribery because the payments were made to prevent the police from doing an unlawful act. Although there is no question that the Bershad's were subjected to at least economic coercion in what may be fairly described as a "shake down" by Philadelphia Police Officers, this is no defense to a charge of bribery in an official matter. Money paid to the Philadelphia Police Officers by the Bershad's and Penn-Regal Company was a benefit as a consideration for violation of an official duty in the event that police officers knew that certain video poker machines were being used for gambling and also, in instances where there was not such evidence, the payment was a consideration for the performance of the officers of their official duty to not interfere with video poker machines that were being lawfully operated. Whether the money was being paid to allow lawful video poker machines to continue in place or to permit unlawful use of such games, the Bershad's engaged in conduct in violation of N.J.SA. 2C:27-2 and I so **CONCLUDE.** I further **CONCLUDE** that they are therefore subject to disqualification by N.J.S.A. 5:12-86c and g.

The applicant also argues that disqualification of a non-gaming related casino service industry under N.J.S.A. 5:12-86c, g is not automatic, but rather is left to the discretion of the Commission which must determine whether an applicant for that

category of license has established clear and convincing evidence of its reputation for good character, honesty and integrity under N.J.A.C. 19:43-1.3(c). The Bershad's cite N.J.S.A. 5:12-92 which provides that:

> Licensure pursuant to Subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in Section 86 of this Act. [emphasis added].

I agree with the applicant's analysis, and the Division's does not dispute it. (see Division's brief of August 2, 1988 at p.2). Casino service industries offering goods or services which directly relate to casino or gaming activity are subjected to the same standards of licensing imposed on casino key employees (N.J.S.A. 5:12-92b) The Casino Control Act provides that "[The] Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of this Act". N.J.S.A. 5:12-89(d). However, the Casino Control Act also clearly allows the Commission discretion as to whether to disqualify non-gaming related casino service industries, which "may" be denied a license on the basis of section 86 disqualification. Accordingly, I **CONCLUDE** that, although the applicant is statutorily disqualified under N.J.S.A. 5:12-86c, g, it may receive a casino license if it can, notwithstanding that disqualification, established by clear and convincing evidence its reputation for good character, honesty and integrity under N.J.A.C. 19:43-1.3.

(2) Rehabilitation Available to the Applicant

The Division maintains that, as a pure matter of law, rehabilitation which statutorily disqualified casino employees and casino hotel employees are entitled to affirmatively demonstrate under N.J.S.A. 5:12-90 and 91 is not available to non-gaming casino service industry applicants who are found to be disqualified under N.J.S.A. 5:12-86(c) and (g). The Bershad brothers do not specifically contest this legal analysis, but maintain that the Commission has discretion under N.J.S.A. 5:12-92(d) to recognize and take into account any rehabilitative factors presented in determining whether Penn Vending has satisfied the regulatory requirements for licensure as a casino service industry. I agree with the Division that rehabilitation, as set forth at N.J.S.A. 5:12-90(h) and 91(d) is not available to the applicants in the sense provided for by those sections to overcome statutory disqualification. However, I also concur with the applicant's analysis that the statutory disqualification for non-gaming casino service industries under N.J.S.A. 5:12-86(c) and (g) is not an automatic and insurmountable barrier to licensure, but rather is a

factor to be considered by the Commission, which may deny a license to an applicant disqualified under section 86. See N.J.S.A. 5:12-92(d). I thus **CONCLUDE** that rehabilitation as provided by N.J.S.A. 5:12-90(h) and 91(d) is not available to the applicant, but further **CONCLUDE** that Penn Vending is not automatically disqualified by the fact that its prior conduct constituted disqualifying conduct and that the Commission has discretion under N.J.S.A. 5:12-92(d) to determine whether, considering the disqualifying conduct and all other factors, the Bershad brothers are entitled to a casino service industry license. The Commission must specifically consider whether the applicant has established by clear and convincing evidence its reputation for good character, honesty and integrity under N.J.A.C. 19:43-1.3(c). See also N.J.A.C. 19:41-3.2(a)(2).

(3) Good Character, Honesty and Integrity

In addition to claiming that it was the victim of an extortion attempt and did not commit any prosecutable acts, the applicant claims that it has established by clear and convincing evidence its reputation for good character, honesty and integrity and is therefore qualified for a casino service industry license, notwithstanding its protection payments to the Philadelphia Police Department in 1981 and 1982. The Bershads emphasize that they have carried on extensive business dealings with as many as seven casino/hotels in Atlantic City since 1983 and have not been the subject of any complaints for violation of the Casino Control Act or its regulations. They note that the Division rests its case entirely upon their acquiescence to unlawful demands for payment by Philadelphia police officers who were indicted and convicted for that conduct. The Bershads stress that they made those payments out of fear for their business and concern for their families and personal well-being and that they fully and eagerly cooperated with the FBI in prosecuting members of the Philadelphia Police Department involved in the shake-down.

The applicant acknowledges that it made a regrettable error in agreeing to make payments to police officers who had unlawfully requested them, but argues that it did so only out of fear of harm to its business or other adverse consequences and stresses that the Bershads cooperated freely and fully with the successful investigation and prosecution of these shake-down payments. The Bershads maintain that they should not be barred from holding a non-gaming casino service industry license because of this one wrongful act in an otherwise unblemished history of conducting business in Pennsylvania and also in Atlantic City. It also cites

the opinion of the Commission in In the Matter of The Application of Playboy-Elsinore Associates for a Casino License, Casino Control Commission Dkt. No. 81-CL-3, as an analogous and controlling precedent. There the Commission considered whether Playboy or its principal, Hugh Hefner, should be disqualified from obtaining a casino license by virtue of the fact that they had made payments to the liquor authorities of New York in the early 1960s, after being requested to do so as a condition of obtaining a license by New York officials who were later prosecuted with Hefner and Playboy's assistance. The appellants argue that the Commission concluded in the Playboy case that though Hefner may have been guilty of conduct constituting bribery under New Jersey law, the fact that his conduct was a result of an extortion scheme by New York liquor officials, combined with his cooperation with the prosecution and in light of his subsequent good and charitable works, permitted a conclusion that the acts constituting bribery were not disqualifying. The Commission specifically noted that Hefner and his associates did not seek to corrupt a governmental regulatory process which was already undeniably corrupt (Commission's decision at page 46). The Commission distinguished this from an earlier case where disqualification was found where an individual seeking a license sought to bribe a public official and was not a mere victim of circumstances whose agreement to provide illegally requested payments was an isolated incident (Ibid. at pp. 45-47). See, In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Dkt. No. 79-EA-60 (1980), affirmed by the New Jersey Superior Court, Appellate Division, Dkt. No. A-4106079T1 (June 24, 1981). The applicants argue that the circumstances of the Philadelphia shake-down, as well as their subsequent record of business dealings are analogous to the facts in Hefner's case.

The division argues that the applicants cannot show the requisite good character, honesty, and integrity because of their involvement in the Philadelphia payment scheme, which it characterizes as a reasoned business decision by the Bershads from which they reaped financial benefits. The Division rejects the contention that the Bershads were victims of an extortion scheme and characterizes them as persons who acted out of business interests and directly benefited financially from payments made to Philadelphia police officers.

This is a difficult and close case which touches on the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations and the operations of casino service industries. The actions of the applicants in making payments to members of the Philadelphia Police Department who were unlawfully demanding money, was wrong, both legally and morally, and

the Bershads indicate that they knew this to be the case. They also concede that the motive for these protection payments was fear of harm to their business interests and possibly other damaging consequences. It is also evident that Penn Vending benefited financially from the arrangement with the Philadelphia police and called upon them to address at least one problem with a customer. Thus, it is somewhat misleading to characterize them merely as helpless victims of extortion; if anything, they were somewhat willing victims. It is also apparent that the pattern of payments continued over almost a year and was not interrupted until the federal probe intervened. Nonetheless, it is understandable in human terms that the Bershads would feel some fear in response to the shake-down demand of the Philadelphia police, whose past reputation is spotted by incidents of abuse of official power. One has only to read the federal indictment handed up against the officers who unlawfully requested payments from the Bershads to get a picture of the extent of the practice by some members of the Philadelphia Police Department of shaking-down payments from both illegitimate and lawful enterprises. I also note that the Bershads fully and freely, indeed one might fairly say eagerly, cooperated with the federal prosecution that brought these officers to justice.

Although the Bershads' actions in acquiescing to the demand for payments was conduct that is intolerable, especially within the highly sensitive context of casino regulation, the coercive nature of the arrangement as well as the applicant's subsequent cooperation with the prosecution are mitigating factors which must be considered in determining whether the company should be denied a casino service industry license for non-gaming services. The Commission's decision in the Playboy-Elsinore matter is closely analogous in that there, as here, there was no attempt to corrupt a governmental regulatory process. The applicant's misconduct in this case, though occurring over almost a year and not ceasing until it was stopped by the authorities, was isolated in the sense that there was no evidence that the appellants ever engaged in similar conduct or ever approached government officials for the purpose of making payments for protection or some other unlawful purpose. The record of the applicant's since its inception in 1948 is without blemish, beyond the troubling incidents of the payments in 1981 and 1982. The Bershad brothers have conducted their business in Atlantic City for several years, with a number of casinos without incurring any complaint or violation of the Casino Control Act or regulations. The Bershads also offered testimony from a variety of character witnesses attesting to their good and honest characters, as well as their generous and charitable activities, particularly in connection with their religious affiliations. I also found the Bershads to be candid, sincere and remorseful as to their conduct in 1981 and 1982 and feel that, given the circumstances of that offense as well as the

absence of any other similar problems in their business dealings, that this conduct is most unlikely to be repeated.

Accordingly, I **CONCLUDE** that the applicant has established by clear and convincing evidence its reputation for good character, honesty and integrity under N.J.A.C. 19:43-1.3(c) and that it has otherwise established its qualifications for holding a non-gaming casino service industry license pursuant to N.J.S.A. 5:12-92(c) and (d).

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the application of the Edward Bershad Company t/a Penn Vending Company for a non-gaming casino service industry license be **GRANTED**.

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

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

Sep. 29, 1988
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

9-29-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 4 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/lh

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WITNESSES

FOR THE PETITIONER:

Norman Greenspan
Alan Bershad
Albert Perlstein
Arthur Pottash
Stephen Rudman
ronald Bershad
Rabbi Allen Lucas
Jay Goldfarb

FOR THE RESPONDENT:

None

EXHIBITS

FOR THE PETITIONER:

P-1 1986 financial statements
P-2 1987 financial statements
P-3 Letter to A. Bershad from Commonwealth of Pennsylvania, 4/22/88
P-4 Certificate of Incorporation
P-5 Certificate of Incorporation, 12/1/1970

FOR THE RESPONDENT:

R-1 Stipulated Document
R-2 Stipulated Document
R-3 Stipulated Document
R-4 Stipulated Document
R-5 Stipulated Docuemnt
R-6 Stipulated Docuemnt
R-7 Stipulated Document
R-8 Stipulated Document
R-9 Stipulated Document

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-CSI-11
APPLICATION NO. 1536-70

APPLICATION OF EDWARD BERSHAD COMPANY,
t/a PENN VENDING COMPANY FOR A
CASINO SERVICE INDUSTRY LICENSE

DECISION

Appearances:

Richard Morrissey, Deputy Attorney General, for the Division of Gaming Enforcement

Mark Sandson, Esq. (Hankin, Sandson & Sandman) for Edward Bershad Company

On August 12, 1987, the Division of Gaming Enforcement (Division) filed a letter-report objecting to the application of the Edward Bershad Company, t/a Penn Vending Company, for a non-gaming casino service industry license. The Division's objection was based on periodic cash payments made by officers of the applicant company to members of the Philadelphia Police Department, purportedly to allow the company to continue to engage in its business of supplying vending machines, including video poker machines, to Philadelphia businesses. The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law.

On September 29, 1988, the Administrative Law Judge filed an initial decision finding, pursuant to N.J.S.A.

5:12-86(g), that Alan and Ronald Bershad, President and Vice President of Penn Vending, had committed bribery in violation of N.J.S.A. 2C:27-2, which is listed as a disqualifying offense in section 86(c)(1) of the Casino Control Act (the Act), but that this offense did not require denial of Penn Vending's application. The ALJ ruled that while rehabilitation as provided by N.J.S.A. 5:12-90(h) and 91(c) is not available to an applicant for a casino service industry license, the Commission has discretion under section 92(d) of the Act to consider disqualifying conduct as but one of many factors bearing on an applicant's fitness for licensure. Upon consideration of all the evidence, the ALJ concluded that Penn Vending had established its good character, honesty and integrity as required by N.J.A.C. 19:43-1.3(c) and recommended that we grant its application for a casino service industry license.

The Division filed exceptions wherein it argued that the ALJ's findings and conclusions were erroneous and urged the Commission to deny Penn Vending's application for licensure. Penn Vending filed a response urging the Commission to adopt the initial decision.

The Commission heard argument in this matter at our meeting of December 21, 1988. At the conclusion of the presentations of counsel, we reserved decision to reflect on an issue of first impression, namely whether a casino

service industry license may be granted notwithstanding that the applicant is disqualified under the criteria of N.J.S.A. 5:12-86. Consideration of this issue also presents this Commission with its first opportunity to interpret section 92(d) of the Act.

On February 1, 1989, we denied Penn Vending's application for a casino service industry license. In addition, we indicated that while we agreed with the ALJ's position that the Commission has discretion under 92(d) to consider disqualifying conduct as only one of the factors bearing on an applicant's fitness for licensure, we believed that, in the exercise of that discretion, it was entirely appropriate to consider such conduct in the context of the rehabilitation factors listed in sections 90(h) and 91(d) of the Act. After applying those concepts to the case at hand, we further concluded that Penn Vending had not established the good character, honesty and integrity required for licensure by N.J.A.C. 19:43-1.3(c).

During 1981 and 1982, Penn-Regal Vending, the predecessor company to Penn Vending Company, was supplying vending machines to various locations in the Philadelphia area. In the late summer of 1981, two of Penn-Regal's video poker machines were seized by the Philadelphia Police Department. Thereafter, Alan Simons, the Bershad brothers' partner in Penn-Regal, advised Alan Bershad that he had been

approached by Inspector John DeBenedetto of the Philadelphia Police Department, who advised that in order to continue doing business in Philadelphia, Penn-Regal would have to make payments of $100 per month for each video machine the company had in operation. Alan and Ronald Bershad testified that after discussing the matter with Mr. Simons, they decided to make the payments out of concern for the economic well-being of their business and their personal safety. While the Bershads testified that they had little contact with the police officers other than to make the requested payments, Alan Bershad admitted that he did speak to Inspector DeBenedetto on one occasion when he had a problem with a location that wanted a poker machine removed and stated that after calling the Inspector he never heard from that customer again.

Although the applicant argues that Alan and Ronald Bershad were victims of extortion and therefore could not be prosecuted for making payments to the police, the ALJ rejected this contention and concluded that the Bershads' conduct constituted bribery pursuant to N.J.S.A. 2C:27.2 since neither extortion nor coercion is a defense to prosecution under that statute. The Commission believes that the judge's determination in this regard is supported by a fair preponderance of the evidence. Even if the brothers were not guilty of disqualifying conduct from the outset,

there can be little doubt that when they advised the officer to whom they were paying protection money that they were having a problem with a location that wanted a poker machine removed -- a situation the officer promptly remedied -- they were then and there engaged in a criminal enterprise. It is this aspect of the Bershad's conduct, coupled with the applicant's later attempts to minimize its significance, that causes us great concern.

Having established the existence of a disqualifying offense, we must consider its effect in the context of this application for a non-gaming casino service industry license. Such a license is governed by subsections (c) and (d) of section 92 of the Act and attendant provisions of our regulations. Of the regulations, the most significant to this case is N.J.A.C. 19:43-1.3(c), which requires applicants to establish their good character, honesty and integrity. Of the statutory provisions, the most pertinent for present purposes is N.J.S.A. 5:12-92(d), which provides:

> Licensure pursuant to subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act.

The use of the permissive "may" in section 92(d) contrasts sharply with the other licensing provisions in the Act. Those governing casino key employees and casino employees,

for example, make application of the section 86 disqualifiers mandatory. Thus, sections 89(d) and 90(e) provide that the Commission "shall deny" a casino key employee license or a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this Act.

Casino service industries which provide gaming-related goods or services are required to meet key employee standards and are therefore subject to mandatory disqualification if a section 86 disqualification is established. The ALJ concluded that with non-gaming companies such as Penn Vending the Legislature vested discretionary authority in this Commission to determine whether to grant or deny an application where a section 86 disqualification appears. However, the ALJ further determined that, unlike casino employee applicants and casino hotel employee registrants in similar situations, CSI applicants are not entitled to demonstrate their rehabilitation from such a disqualification. We do not disagree with the ALJ on this point. Nevertheless, we do believe that, although section 92(d) of the Act does not specifically make rehabilitation pursuant to sections 90(h) and 91(d) available to CSI applicants, as a guide to the sound exercise of our discretion, it is entirely reasonable and proper to refer to the eight factors listed in these

sections with but slight modification to account for the fact that the applicant is an enterprise providing goods or services to a casino licensee. Of the eight statutory factors, only the last actually relates to rehabilitative evidence in the usual sense of that phrase. The other seven criteria concern: (1) the nature of the enterprise's relationship with the casino industry; (2) the nature and seriousness of the offense or conduct; (3) the circumstances surrounding it; (4) the date it occurred; (5) the age of the persons or persons responsible; (6) whether the offense was isolated or repeated; and (7) any social conditions which may have contributed to the offense or conduct.

In our opinion, reference to these eight "rehabilitation" factors is desirable since these are precisely the concerns that we should evaluate in determining whether to grant an application for a non-gaming casino service industry license where an 86(c) disqualification is evident, and because the utilization of these factors provides a definite yet flexible structure to our analysis. In addition, we have the benefit of innumerable past decisions in which we have applied the rehabilitation criteria in a variety of circumstances. Lastly, identification of the factors pertinent to our decision will undoubtedly prove useful to the parties in the preparation of their cases and to the administrative law

judges who must evaluate those presentations in the first instance.

Applying the "rehabilitation" factors to the case before us illustrates just how appropriate those factors are in assessing an applicant's fitness for licensure.

Penn Vending currently operates video arcades in six Atlantic City casino hotels. Between June 1986 and May 1987, it made approximately $370,821 from this business. Since the nature of the applicant's business requires on-site presence in several casino hotels and the volume of business is quite substantial, our concerns as to the applicant's suitability for licensure are considerable.

As to the nature of the offense, the applicant paid approximately $33,000 to Philadelphia police officers. The ALJ found that this conduct, although unprosecuted, constituted bribery in violation of N.J.S.A. 2C:27-2, which is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and 86(g). We agree and would note that few, if any, offenses are more intrinsically repugnant to the concerns of a strict regulatory process than is bribery. As this Commission observed in Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584, 629-630 (1980), "bribery is an offense which strikes at the very heart of the integrity of government regulatory processes in a manner common to few

other offenses since the object of bribery is the corruption of government."

As for surrounding circumstances, Alan Bershad testified that he agreed to make payments to the Philadelphia police officers in part because he was "nervous for myself and my family." While the Division characterizes this testimony as self-serving, the ALJ found that fear in response to the demands of the Philadelphia Police to be "understandable in human terms." In this connection, however, we must note that the Bershads were not in all respects the unfortunate victims of the bullying tactics of police officers, at least not to the extent the applicant would have us believe. Nowhere was this more evident than when they sought and obtained the intervention of the renegade officers when one of their customers wanted Penn Vending's machines removed. This circumstance serves to heighten the seriousness of the offense which, in our opinion, is not ameliorated by the argument advanced that Bershad's call for help to Inspector DeBenedetto was a consequence of what counsel termed, "the extortion attempt." We are convinced from our review of this record that the more likely inference is that the Bershads wanted to obtain the protection they were paying for and thereby enhance their business interests. To this extent, at least, the claim that the Bershads' actions were motivated by fear of

physical harm from the police simply lacks the ring of truth.

The offense occurred during 1981 and 1982, approximately six years ago.

Alan and Ronald Bershad were approximately 40 and 45 years of age at the time the offense was committed. Therefore the offense cannot be attributed to youth or immaturity.

The ALJ found that, although it occurred over almost a two-year period and did not cease until the authorities intervened, the applicant's misconduct was isolated in the sense that there is no evidence that Penn Vending ever engaged in similar conduct and that, other than that incident, the company's record since its founding in 1948 is "without blemish."

There is no evidence of social conditions which may have contributed to this offense.

With respect to evidence of rehabilitation, the ALJ found that the Bershads acknowledged that they had made a regrettable error in agreeing to make payments to police officers and were sincerely remorseful for their conduct. The ALJ also believed that the Bershads fully and freely cooperated with the federal prosecution that brought the police officers to justice. While we accept the ALJ's conclusion in this regard, we would note that it was not the

Bershads who initiated the contact with the authorities, but rather the FBI which came to them.

Balancing all of these factors, we are compelled to conclude that the applicant has not overcome the disqualification which is a consequence of the behavior of the Bershad brothers in 1981 and 1982. Accordingly, the Commission must reject the ALJ's conclusion that Edward Bershad Company t/a Penn Vending Company has established the re ite good character, honesty and integrity and deny its ar tion for a casino service industry license.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

E. Kenneth Burdge

W. David Waters

mmissioner Armstrong does not join in this opinion. Wh ie agrees that the proper analysis involves cor ration of the rehabilitation factors of N.J.S.A. 5:12-90(h), she would find the applicant qualified for licensure.

28 MAR 1989
Dated

Valerie H. Armstrong, Vice Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-290 AND 88-147
OAL DOCKET NO. CCC 2480-87 and 8472-87
ORDER NO. 88-46-19

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
Complainant,	:	INTERIM ORDER
v.	:	
BOARDWALK REGENCY CORPORATION,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating a stipulation of facts and an addendum to stipulation of facts entered into by Boardwalk Regency Corporation (BRC) and the Division of Gaming Enforcement (Division) having been filed with the New Jersey Casino Control Commission; and the parties having filed exceptions and replies thereto; and the Commission having considered the entire record of these proceedings at its public meetings of November 23 and 30, 1988; and

IT IS on this 8th day of December 1988, ORDERED that the finding in the initial decision that BRC did not violate N.J.S.A. 5:12-104(a)(1) is adopted essentially for the reasons stated by the ALJ; and

IT IS FURTHER ORDER THAT the finding that BRC violated N.J.S.A. 5:12-99 and -101(c) and N.J.A.C. 19:45-1.3 is adopted for the reasons stated by the Chair on the record; and

IT IS FURTHER ORDER THAT the parties, by December 16, 1988, file briefs on whether:

1. N.J.S.A. 5:12-70(o) and 100(e) prescribe not only a minimum return to patrons at any game but also equal chance of winning for all patrons at such game and whether the Incentive Program created inequality between patrons in the program and other patrons;

2. BRC's implementation of the Incentive Program without prior Commission approval resulted in a continuing violation under N.J.S.A. 5:12-123(a) for each day that the program was available to qualifying patrons;

3. Each revision of the Incentive Program resulted in a separate violation; and

4. A discrete violation occurred in each instance where BRC implemented the Incentive Program to the extent it deviated from approved procedures; and

IT IS FURTHER ORDERED THAT those matters for which no determination was made at the public meeting of November 30, 1988, shall be disposed of no earlier than the public meeting of January 11, 1989, with such further proceedings as may be necessary to consider penalty to be held thereafter.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-290 AND 88-147
OAL DOCKET NOS. CCC 2480-87
and CCC 8472-87
ORDER NO.: 89-2-16

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
Complainant,	:	SECOND INTERIM ORDER
v.	:	
BOARDWALK REGENCY CORPORATION,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating a stipulation of facts and an addendum to stipulation of facts entered into by Boardwalk Regency Corporation (BRC) and the Division of Gaming Enforcement (Division) having been filed with the New Jersey Casino Control Commission; and the parties having filed exceptions and replies thereto; and the Commission having considered the entire record of these proceedings at its public meetings of November 23 and 30, 1988, and having ruled, as set forth in its Interim Order dated December 8, 1988, on certain issues of liability and having requested the parties to submit briefs on several other issues; and the Commission having again considered the entire record of these proceedings at its public meeting of January 11, 1989, and, for the reasons announced on the record at that meeting, having disposed of certain other issues,

IT IS on this day of February 1989, ORDERED that the findings in the initial decision that BRC violated N.J.S.A. 5:12-101(a)(1) and (a)(2) and the corresponding regulations are rejected; and

IT IS FURTHER ORDERED that the finding that BRC violated N.J.S.A. 5:12-101(b) by accepting patron incentive checks is modified in order to clarify that violations occurred only with respect to those checks which had been accepted for deposit in patron cash deposit accounts or for which the patron had been given cash; and

IT IS FURTHER ORDERED that, to the extent that the ALJ's decision is predicated on his own personal knowledge as set forth in footnote 6 of the initial decision, it is rejected; and

IT IS FURTHER ORDERED that the finding that BRC issued impermissible cash complimentaries is rejected; and

IT IS FURTHER ORDERED that the finding that BRC violated N.J.S.A. 5:12-70(o) is rejected; and

IT IS FURTHER ORDERED that the initial decision is modified to make clear that N.J.S.A. 5:12-101(e) and its implementing regulations are intended to offer fair odds by ensuring that all patrons uniformly within a casino have an

equal chance of winning at each type of table game in order for maximum patron participation to occur; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL on an expedited basis for the limited purpose of further considering whether the Incentive Program created inequality between patrons in the program and other patrons in violation of N.J.S.A. 5:12-100(e) and its corresponding regulations; and

IT IS FURTHER ORDERED that the violations of section 99 are of a continuing nature and, therefore, constitute a violation for each day that BRC had the unapproved Incentive Program procedures available to be used for qualifying patrons; and

IT IS FURTHER ORDERED that the parties, within two weeks of the ALJ filing his initial decision on the issue that has been remanded, brief simultaneously the penalty aspects of this case.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-290 AND 88-147
OAL DOCKET NOS. CCC 2480-87
and CCC 8472-87
ORDER NO.: 89-8-24(a)

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
Complainant,	:	THIRD INTERIM ORDER
v.	:	
BOARDWALK REGENCY CORPORATION,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge incorporating a stipulation of facts and an addendum to stipulation of facts entered into by Boardwalk Regency Corporation (BRC) and the Division of Gaming Enforcement (Division) having been filed with the New Jersey Casino Control Commission; and the parties having filed exceptions and replies thereto; and the Commission having considered the entire record of these proceedings at its public meetings of November 23 and 30, 1988, and having ruled, as set forth in its Interim Order No. 88-46-19, dated December 8, 1988, on certain issues of liability and having requested the parties to submit briefs on several other issues; and the Commission having again considered the entire record of these proceedings at its

public meeting of January 11, 1989, and, as set forth in its Second Interim Order No. 89-2-16, dated February 10, 1989, having remanded the matter to the OAL for the purpose of conducting a hearing as to whether N.J.S.A. 5:12-100(e) and the corresponding regulations had been violated; and the Division having requested the Commission to reconsider the decision remanding the case for the purpose of having the Commission conduct the hearing directly; and the Commission having considered the Division's request, BRC's response thereto and the argument of counsel at the public meeting of February 22, 1989;

IT IS on this 20th day of March 1989, ORDERED, that the request of the Division is denied and the matter is remanded to the OAL for the purpose of conducting a hearing as set in Order No. 89-2-16, and

IT IS FURTHER ORDERED that, consistent with prior Commission rulings on all other aspects of this case, the OAL shall reassess and reevaluate the penalties previously recommended in the initial decision dated September 12, 1988, which reevaluation shall include, inter alia, a consideration of the criteria in N.J.S.A. 5:12-130 and of the relevancy of factors analogous to those detailed in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), particularly with respect to the monetary value by which BRC

benefitted or profitted as a result of its running the Incentive Program.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 2480-87 &
CCC 8472-87
AGENCY DKT. NOS. 87-290 &
88-147
(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
BOARDWALK REGENCY CORPORATION,
d/b/a CAESARS ATLANTIC CITY,
Respondent.

Joseph M. Nardi III, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Robert L. Hollingshead, Esq., for the respondent (Pitney, Hardin, Kipp and Szuch, attorneys)

Record Closed: July 29, 1988 Decided: September 12, 1988

BEFORE **STEVEN L. CARNES,** ALJ:

New Jersey Is An Equal Opportunity Employer

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on February 19, 1987, and a second complaint on November 17, 1987, seeking sanctions against the respondent for alleged violations of the Casino Control Act. More specifically, the Division alleges that: (1) the respondent's issuance of incentive payments to its patrons violated N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a); (2) the respondent's implementation of its incentive program prior to receiving Commission approval for the program violated N.J.S.A. 5:12-99b and N.J.A.C. 19:45-1.3(b) and (c); (3) the respondent's failure to submit a description of its internal procedures and controls of its incentive program violated N.J.S.A. 5:12-99a and N.J.A.C. 19:45-1.3(a); (4) the respondent's payments under its incentive program of a percentage share of money or property gambled at the casino or derived from casino activity violated N.J.S.A. 5:12-104a(1); and (5) the respondent's acceptance of various checks which the respondent issued to casino patrons violated N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25.

PROCEDURAL HISTORY

The Division filed a complaint with the Commission on February 19, 1987, seeking sanctions against the respondent for the above-alleged violations of the Casino Control Act. By answer dated March 27, 1987, which was received by the Commission on March 30, 1987, the respondent denied the allegations and requested a hearing. On April 9, 1987, the Commission transmitted the matter to the Office of Administrative Law, where it was received on April 13, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before Administrative Law Judge Edgar R. Holmes on June 15, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether the incentive payments made by BRC to its patrons pursuant to its Incentive Program violated N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a);

B. Whether BRC's failure to submit a description of its system of internal procedures, administrative and accounting controls of its Incentive Program violated N.J.S.A. 5:12-99a and N.J.A.C. 19:45-1.3(a);

C. Whether BRC adopted and implemented its Incentive Program prior to receiving approval of said program from the Casino Control Commission, in violation of N.J.S.A. 5:12-99b and N.J.A.C. 19:45-1.3(b) and (c);

D. Whether the incentive agreements entered into between BRC and its patrons pursuant to BRC's Incentive Program provide for the payment of a percentage or share of money or property gambled at a casino or derived from casino gaming activity, in violation of N.J.S.A. 5:12-104a(1);

E. Whether BRC's acceptance of 34 checks which BRC had issued to casino patrons during the period from March 8, 1983, through July 8, 1985, occurred in violation of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and the Casino Control Commission's decision of May 25, 1982, as memorialized in the Commission's order of November 15, 1982;

F. Whether BRC's acceptance of 30 checks which BRC had issued to casino patrons during the period from July 9, 1985, through October 31, 1986, occurred in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25;

G. Whether the doctrines of waiver, estoppel or laches preclude the Division.

A second prehearing conference was scheduled for September 8, 1987. On September 4, 1987, both parties requested an adjournment of the second prehearing conference, as it was then unnecessary. A hearing was scheduled for September 24 and 25, 1987. On September 18, 1987, both parties requested an adjournment of the September 24 and 25 hearing dates as that was the Jewish New Year and several witnesses would be unavailable. This request was granted. Prehearing briefs were to be filed by both parties by October 30, 1987. Both parties subsequently requested that the filing date be extended to November 13, 1987. This request was granted. I received the respondent's affirmative defense brief on November 13, 1988, and the petitioner's initial brief on

November 24, 1988. I received the petitioner's response brief to the respondent's affirmative defense brief on December 4, 1987, and I received the respondent's response brief to the petitioner's initial brief on December 9, 1987. A hearing was held on December 10, 1987, in the Municipal Courtroom, Borough Hall, Ventnor, New Jersey. At this hearing, both parties raised the issue of consolidation of a second complaint and consented to the consolidation.

The Division filed a second complaint with the Commission on November 17, 1987, seeking sanctions against the respondent for substantially identical violations of the Casino Control Act. By answer dated December 9, 1987, which was received by the Commission on December 11, 1987, the respondent denied the allegations and requested a hearing. On December 14, 1987, the Commission transmitted the matter to the Office of Administrative Law, where it was received on December 18, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. In its letter of transmittal, the Commission directed that, due to the commonality of factual and legal issues, Agency Docket No. 88-147 was to be consolidated with Agency Docket No. 87-290 (OAL Dkt. No. CCC 2480-87).

The hearing was continued on January 28, 1988, in the Municipal Courtroom, Buena Municipal Building, Minotola, New Jersey. Both cases were consolidated at that time for purposes of hearing. The hearing was continued on January 29, 1988, at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey. The hearing was continued and concluded on March 29, 1988, at the Office of Administrative Law in Trenton. The record remained open in order to afford both parties the opportunity to submit post-hearing briefs. The petitioner was afforded until April 5, 1988, to submit its brief, and the respondent was afforded until May 3, 1988, to submit a response brief. By letter dated April 8, 1988, the Division requested an extension of time until April 15, 1988, to submit its briefs. This request was granted, as there was a death in the deputy attorney general's family which necessitated his absence from work. The respondent's response brief deadline was adjusted accordingly. The petitioner submitted its penalty brief on April 29, 1988. The petitioner submitted its proposed findings of fact and conclusions of law on June 1, 1988. By letter dated June 23, 1988, the respondent requested that it be allowed to file its response by July 8, 1988. This request was granted. On July 14, 1988, the respondent requested an extension of time and indicated it would

file its response brief within a week. This request was granted. The respondent's brief was received by me on July 29, 1988, at which time the record closed.

STIPULATED FACTS

The Division and the respondent have prepared a Stipulation of Facts and Addendum to Stipulation of Facts which is attached hereto. The Stipulation of Facts and Addendum to Stipulation of Facts provide:

1. Boardwalk Regency Corporation ("BRC") is a New Jersey corporation which was incorporated in 1977 and which has had its principal place of business located at the Boardwalk and Arkansas Avenue in Atlantic City, New Jersey, at all times referenced herein.

2. BRC currently holds a casino license which was originally issued by the Casino Control Commission ("Commission") effective October 25, 1980, and most recently renewed on October 25, 1987.

3. BRC is the holder of a Certificate of Operation, effective June 26, 1979, at which time BRC was the holder of a temporary casino permit. Said Certificate of Operation entitles BRC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder.

4. In the latter part of 1982, BRC adopted a marketing program wherein BRC paid to certain casino patrons an amount of cash that was calculated upon a percentage of the amount of cash placed on deposit by the patrons with BRC as a front money deposit.

5. The marketing program described in paragraph 4, supra, was adopted by BRC for the purpose of providing an incentive to certain casino customers to patronize BRC. In addition, the marketing program was implemented by BRC because of concerns regarding inadequate foreign currency exchange rates at that time, the length of check clearing times for foreign bank accounts and difficulties encountered by BRC in the collection of payments from

foreign patrons. For purposes of this Stipulation, this marketing program will be referred to as the Incentive Program.

6. The Incentive Program payments were initially calculated on the basis of the patron's front money deposit.

7. During the period from March 14, 1983 [March 8, 1983], through October 31, 1983, 11 Incentive Program payments were made to BRC, patrons by BRC which payments were calculated upon a percentage of the patrons' front money deposits at BRC. Attached hereto as Exhibit A (J-30) is a sample of the Incentive Agreement prepared during each of the 11 transactions.

8. The total amount of Incentive Program payments to BRC patrons, which payments were calculated upon a percentage of the patrons' front money deposits, was $122,740.

9. The patrons who received Incentive Program payments, based upon a percentage of their front money deposits, the dates of payment and the amount of each payment, are itemized as follows:

	DATE	PATRON	AMOUNT
1.	03/08/83	K. T.	$ 3,300
2.	04/27/83	V. V. (Mr.)	10,000
3.	04/27/83	V. V. (Mrs.)	3,000
4.	06/19/83	F. S. C.	6,000
5.	09/07/83	S. Y. L.	46,500
6.	09/07/83	K. S. W.	2,100
7.	09/07/83	C. K. W.	11,250

8.	09/07/83	K. F. L.	$ 2,250
9.	09/07/83	S. Y. K.	22,500
10.	10/24/83	W. B. (F.) H.	9,450
11.	10/31/83	C.B. C.	6,390

10. During the period from March 8, 1983 [March 14, 1983], through May 20, 1984, 15 Incentive Program payments were made to BRC patrons by BRC, which payments were calculated upon a percentage of the patrons' outstanding credit balances at BRC. Attached hereto as Exhibit B (J-31) is a sample of the Incentive Agreement prepared during each of the 15 transactions.

11. The total amount of Incentive Program payments to BRC patrons, which [payments] were calculated upon a percentage of the patrons' outstanding credit balances, was $302,750.

12. The patrons who received Incentive Program payments based upon a percentage of their outstanding credit balances at BRC, the dates of the payments and the amount of each payment, are itemized as follows:

	DATE	PATRON	AMOUNT
1.	03/14/83	B. S. O.	$ 50,000
2.	05/16/83	A. C.	15,600
3.	07/18/83	A. C.	7,800
4	07/31/83	A. C.	24,000
5.	12/08/83	S. M. S.	20,000

6.	12/11/83	A. C.	12,600
7.	12/12/83	P. L.	14,000
8.	12/21/83	S. M. S.	32,500
9.	01/31/84	W. K. T.	4,250
10.	02/02/84	L. C. Q.	10,000
11.	02/02/84	L. C. Q.	50,000
12.	02/05/84	A. C.	4,400
13.	02/13/84	A. C.	8,400
14.	05/13/84	A. C.	24,000
15.	05/20/84	A. C.	25,200

13. During the period from August 4, 1984, through October 29, 1986, 46 incentive Program payments were made to BRC patrons by BRC, which payments were calculated upon a percentage of the patrons' gambling losses at BRC. Attached hereto as Exhibit C (J-32) is a sample of the Incentive Agreement prepared during each of the 46 transactions.

14. The total amount of Incentive Program payments which were calculated upon a percentage of patrons' gambling losses was $1,183,040.

15. The patrons who received Incentive Program payments based upon a percentage of their gambling losses at BRC, the dates of the payments and the amount of each payment, are itemized as follows:

	DATE	PATRON	AMOUNT
1.	08/04/84	P. L.	$ 2,100
2.	09/10/84	A. C.	21,000
3.	10/22/84	A. C.	32,680
4.	10/27/84	A. C. (Payee: BRC)	920
5.	10/29/84	A. C.	27,300
6.	11/05/84	A. C.	840
7.	12/10/84	A. C.	4,200
8.	01/01/85	T. P. Y. (John)	2,300
9.	01/01/85	T. P. Y. (Eleanor)	2,200
10.	02/03/85	A. C.	25,200
11.	02/23/85	S. P. L.	5,000
12.	02/26/85	K. P. L. C.	30,000
13.	06/11/85	P. L.	6,270
14.	06/12/85	H. S. C. P. (payee: Caesars Boardwalk)	5,050
15.	06/17/85	A. C.	33,600
16.	07/08/85	H. S. C. P.	950
17.	07/18/85	G. Y.	9,130

18.	07/19/85	V. C.	18,000
19.	07/28/85	A. C.	17,640
20.	09/07/85	H. S. S. P.	36,000
21.	09/22/85	A. C.	25,200
22.	10/06/85	H. S. F.	15,600
23.	10/06/85	T. P. Y. (Eleanor)	18,000
24.	10/20/85	K. S. W.	21,300
25.	11/24/85	S. Y. L. (payee: BRC)	30,000
26.	12/12/85	K. N.	22,200
27.	01/04/86	L. M.	20,000
28.	01/05/86	L. M.	47,500
29.	01/05/86	L. M.	7,000
30.	02/11/86	L. K. P. C.	32,000
31.	02/19/86	S. M. S.	83,000
32.	02/20/86	S. M. S.	25,000
33.	04/01/86	S. S.	10,000
34.	05/31/86	A. C.	27,300
35.	05/31/86	A. C.	420

36.	06/09/86	N. L. (payee: Caesars Atlantic City)	6,000
37.	06/14/86	L. C. Q.	6,000
38.	06/14/86	L. C. Q.	80,000
39.	06/23/86	L. M.	100,000
40.	07/29/86	K. C.	15,000
41.	08/30/86	C. S. W.	16,500
42.	09/09/86	L. C. Q.	70,000
43.	09/09/86	L. C. Q.	5,000
44.	10/21/86	H. H. (payee: Caesars Atlantic City)	4,000
45.	10/24/86	K. N.	110,640
46.	10/29/86	L. C. Q.	105,000

16. The total amount of Incentive Program payments made to BRC patrons by BRC during the period from March 8, 1983 through October 29, 1986, was $1,608,530.

17. BRC's policies and procedures for its Incentive Program require all selected patrons to agree, prior to engaging in [a] gaming activity, to satisfy certain conditions established by BRC during the patrons' visit to BRC. A patron who satisfies the conditions is then extended the Incentive Program payment.

18. Among the conditions that were required at various times to be met by BRC patrons under BRC's Incentive Program policies and procedures have been that

the patron was a foreign citizen, maintained his principal residence outside the continental United States and that the patron would participate in a certain level of gaming activity at BRC.

19. During the period from on or about March 8, 1983, through on or about August 4, 1984, a patron participating in the Incentive program was required to execute, along with at least two BRC representatives, an "Authorization For Foreign Casino Customer Incentive Plan Payment" (hereinafter "Authorization"), which stated that the "preferred" or "valued casino customer. . . met the qualification criteria of this casino. . ." As referenced above, sample copies of the Authorizations utilized by BRC are attached hereto as Exhibits A and B (J-30 and J-31).

20. The Authorizations described in paragraph 19, supra, provided for the payment to the patron of an amount based on either the amount of cash placed on deposit by the patron, the patron's outstanding credit balance at the conclusion of his gambling activity, or an amount based on the patron's gaming losses at BRC at the conclusion of his gambling activity.

21. In addition to requiring the patron to deposit as front money a certain amount of cash, as described in paragraph 20, supra, the patron was also required to reach a certain level of gambling, such as having the patron's total cumulative bets equal 20 times the patron's cash deposit. In addition, the patron was required to gamble for a minimum number of hours.

22. In instances where the patron's Incentive Program payments were calculated upon a percentage of the patron's gambling losses at BRC, as described in paragraph 20, supra, the BRC patron was required to meet the other conditions of the Incentive Program policies and procedures, as described in paragraph 18 supra.

23. The incentive payments extended through the use of the Authorizations described in paragraph 19, supra, were processed in the following manner. Following the completion of the patron's gambling activity at BRC and the satisfaction of all of the conditions agreed to by the patron and BRC, BRC cage personnel, pursuant to the Incentive Program policies and procedures,

prepared a BRC cage disbursement check payable to the patron. The patron was then required to endorse the cage disbursement check and apply it against the patron's outstanding credit balance at BRC.

24. Beginning on August 5, 1984, the Incentive Program policies and procedures required the participating patron and a BRC representative to sign an "Incentive Agreement" wherein BRC agreed to provide the patron with an incentive payment at the conclusion of the patron's gaming activity, provided that the patron met the agreed upon conditions as contained in the Incentive Agreement. As referenced above, a sample copy of the Incentive Agreements utilized by BRC is attached hereto as Exhibit C (J-32).

25. In each of the Incentive Agreements entered into between BRC and its patrons during the period from August 5, 1984, through October 29, 1986, the condition which the participating patron was required to satisfy was a minimum loss as a result of the patron's gaming activity.

26. The incentive payments extended through the use of the Incentive Agreements described in paragraph 24, supra, were processed in the following manner. At the conclusion of the patron's gaming activity, if the patron had satisfied the minimum loss requirement as set forth in the Incentive Agreement, BRC cage personnel calculated the amount of the Incentive Program payment and issued a cage disbursement check payable to either the patron or to BRC in the agreed upon amount.

27. After BRC cage personnel issued a check payable to the patron, the patron was then required to endorse the incentive check payable to the order of BRC for the purpose of applying the check against any outstanding balance owed by the patron to BRC.

28. After the patron endorsed the incentive check as described in paragraph 27, supra, BRC cage personnel applied the incentive check to the outstanding indebtedness of the patron; if counter checks were paid with the incentive check, the outstanding counter checks paid were returned to the patron.

29. At such times when the incentive check was made payable to BRC as described in paragraph 26, supra, the incentive check was applied directly to the patron's outstanding indebtedness to BRC, without the need for the patron's endorsement.

30. The policies and procedures employed by BRC regarding the Incentive Program were first set forth in a memorandum dated August 25, 1982, from Larry Woolf, former BRC Vice-President for Casino Operations, to the "Credit Committee File." The memorandum was read and agreed to by Robert E. Reilert, Vice-President/General Counsel for BRC. Attached hereto as Exhibit D (J-33) is a copy of Mr. Woolf's memorandum.

31. In a memorandum dated September 2, 1983, from J. Terrence Lanni, President of Caesars World International, to various employees of Caesars World International, Caesars Palace, Caesars Tahoe and Caesars Boardwalk Regency, Mr. Lanni memorialized the guidelines to be employed in the conduct of the Incentive Program at BRC. Attached hereto as Exhibit E (J-34) is a copy of Mr. Lanni's memorandum.

32. BRC's drafted in-house policies and procedures for the Incentive Program in or about May 1984. A copy of the policies and procedures dated May 22, 1984, is attached hereto as Exhibit F (J-35).

33. BRC's Incentive Program policies and procedures described in paragraph 32, supra, have been revised at least four times. The policies and procedures are dated November 21, 1984, December 18, 1984, March 21, 1985, and April 10, 1985. Copies of those policies and procedures are attached hereto as Exhibits G through J (J-36 through J-39).

34. At the time that BRC first adopted and first implemented its Incentive Program in the latter part of 1982 and early part of 1983, respectively, and continuing to the present date, BRC has not submitted to either the Commission for review and approval or the Division for review a description of its system of internal procedures and administrative and accounting controls of the Incentive Program.

35. On or about March 1, 1982, BRC filed with the Commission a Petition for Declaratory Ruling, PRN 060204, wherein BRC requested the Commission to amend N.J.A.C. 19:45-1.1 for the purpose of including Atlantic City hotels and casinos' checks in the definition of "cash equivalent." A copy of BRC's petition is attached hereto as Exhibit K (J-40).

36. On May 25, 1982, during the Commission's public meeting, the Commission considered BRC's petition and resolved to deny the petition.

37. On November 15, 1982, the Commission issued a final order to BRC's petition, which order memorialized the Commission's decision of May 25, 1982, as described in paragraph 36, supra. A copy of the Commission's order is attached hereto as Exhibit L (J-41).

38. On or about July 17, 1985, the New Jersey Legislature amended N.J.S.A. 5:12-101 (see L. 1985, c. 245) to include Section 101g, which provides as follows:

> g. Notwithstanding the provisions of subsection b. of this section to the contrary, a casino licensee may accept a check from a person to enable the person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for the check, provided that:
>
> (1) The check is drawn by a casino licensee pursuant to the provisions of subsection k. of section 100 or P.L. 1977, c. 110 (C. 5:12-100k.) or upon a withdrawal of funds from an account established in accordance with the provisions of subsection b. of this section;
>
> (2) The check is identifiable in a manner approved by the commission as a check issued for a purpose listed in paragraph (1) of this subsection;
>
> (3) The check is dated, but not postdated;
>
> (4) The check is presented to the cashier or the cashier's representative by the original payee and its validity by the drawer; and

(5) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents.

No casino licensee shall issue a check for the purpose of making a loan or otherwise providing or allowing any advance or credit to a person to enable the person to take part in gaming activity as a player.

39. During the period from March 8, 1983, through July 8, 1985, BRC issued 42 checks payable to patrons pursuant to its Incentive Program.

40. During the period from March 8, 1983, through July 8, 1985, BRC accepted from its patrons 34 of the 42 checks which it had issued to said patrons pursuant to its Incentive Program, as described in paragraph 39, supra. The remaining eight checks remained in the possession of the patron at the time the patron departed from the casino.

41. During the period from July 9, 1985, through October 29, 1986, BRC issued 30 checks payable to patrons pursuant to its Incentive Program.

42. During the period from July 9, 1985, through October 29, 1986, BRC accepted from its patrons 30 checks which it had issued to said patrons pursuant to its Incentive Program, as described in paragraph 41, supra.

43. At all times pertinent herein, BRC substantially complied with its internal policies and procedures relative to the Incentive Program. Monies disbursed by BRC to qualifying patrons pursuant to the Incentive Program appeared on BRC's internal financial statements as "Commission: Customer Incentives." The customer incentive payments appeared in the quarterly financial statements submitted to the Commission as part of the aggregate total for "Casino Expenses." Check disbursements were recorded in the BRC Customer Reimbursement Check log as "incentive" or "incentive payment."

44. During the period encompassed by the Complaint, the Division conducted periodic audits of various aspects of BRC's cage functions, as well as an annual Operations Report which summarized various audits conducted during the past casino license renewal period.

45. In or about April 1983, Division Agent Richard Williamson conducted three interviews with BRC personnel and obtained materials relative to an Incentive Program begun at BRC in the latter part of 1982. In 1986 and early 1987, Division Agent John McGovern conducted an investigation of BRC's Incentive Program from which the 72 incentive payments described in this Stipulation of Facts were traced through BRC's documentation and which resulted in the filing of the Division's Complaint on February 19, 1987. Attached hereto as Exhibit M (J-42) is a copy of the Division Agent Richard Williamson's Investigation Report with attached Exhibits.

46. On November 17, 1987, the Division filed a second complaint against BRC, State of New Jersey v. Boardwalk Regency Corporation d/b/a Caesars Atlantic City, CCC Docket No. 88-147, OAL Docket No. CCC 8472-87, alleging violations of N.J.A.C. 5:12-101a and c, N.J.A.C. 19:45-1.25(a), N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3, N.J.S.A. 5:12104a(1) and N.J.S.A. 5:12-101g.

47. The allegations contained in the Division's complaint of November 17, 1987, resulted from the Division's investigation of the Incentive Program conducted by BRC during the period from November 1, 1986, through October 24, 1987.

48. During the period from November 1, 1986, through October 24, 1987, BRC entered into 18 Incentive Agreements with six selected BRC patrons and, pursuant to said Incentive Agreements, issued Incentive Program payments to said BRC patrons.

49. The total amount of Incentive Program payments by BRC to selected patrons during the period from November 1, 1986 through October 24, 1987, is $942,080 [$943,080].

50. The names of the BRC patrons who received Incentive Program payments, the dates the payments were made and the total amounts of the payments pursuant to the Incentive Agreements, during the period from November 1, 1986, through October 24, 1987, are as follows:

	PATRON NAME	DATE PAID	AMOUNT
1.	A. G.	11/21/86	$ 30,000
2.	A. G.	11/23/86	6,940
3.	A. C.	11/30/86	17,640
4.	N. L.	12/12/86	4,200
5.	K. N.	01/31/87	210,000
6.	K. N.	02/05/87	210,000
7.	L. M.	03/01/87	20,000
8.	N. L.	04/08/87	3,500
9.	A. C.	04/13/87	25,200
10.	S. W. C.	05/24/87	16,500
11.	S. W. C.	05/31/87	15,000
12.	A. C.	06/14/87	8,500
13.	N. L.	07/01/87	7,200
14.	L. M.	07/03/87	20,000
15.	A. C.	08/16/87	8,400
16.	L. M.	09/25/87 & 09/27/87	170,000
17.	L. M.	10/23/87 & 10/24/87	120,000

18. K. N.	10/23/87	50,000
		$ 942,080
		[943,080]

51. Each of the Incentive Agreements referred to in paragraph 50, supra, is evidenced by a document captioned "Incentive Agreement" which is authorized and signed by a casino Shift Manager [or someone in a higher position] and is signed by the casino patron. Each Incentive Agreement records the basis on which the incentive is determined. Attached hereto as Joint Exhibits 44 through 61 are true and correct copies of the 18 Incentive Agreements entered into by BRC during the period from November 1, 1986, through October 24, 1987.

52. Thirteen of the Incentive Program payments issued by BRC to its patrons were used in the patrons' countercheck redemption transactions or were placed on deposit with BRC as front money. The patrons who redeemed counterchecks with their Incentive Program payment and the dates of the payments are listed as follows:

PATRON NAME	DATE PAID
A. G.	11/23/86
A. C.	11/30/86
N. L.	12/12/86
N. L.	04/08/87
A. C.	04/13/87
S. W. C.	05/24/87
S. W. C.	05/31/87

L. M.	07/03/87
L. M.	09/27/87
L. M.	10/24/87

53. Patron K. N., who received Incentive Program payments on 1/31/87 ($210,000), 2/5/87 ($210,000) and 10/23/87 ($50,000), placed the Incentive Program payments received on those dates on deposit with BRC as front money deposits.

54. Of the total amount of $942,080 [$943,080] which was paid to the BRC patrons during the period from November 1, 1986, through October 24, 1987, $802,080 [$803,080] was calculated upon a percentage of the patrons' gambling losses. The balance of $140,000, which was paid to two patrons on six occasions, was not based on a percentage of the patrons' gambling losses but was provided to said patrons as an "Incentive for play." Specifically, the following patrons received the following incentive payments on the following dates which were based on an "Incentive for play":

PATRON NAME	DATE PAID	AMOUNT
K. N.	01/31/87	30,000
K. N.	02/05/87	30,000
L. M.	02/27/87	20,000
L. M.	07/03/87	20,000
L. M.	09/24/87	20,000
L. M.	10/23/87	20,000
		$140,000

55. During the period from November 1, 1986, through October 24, 1987, BRC issued 23 cage disbursement checks pursuant to the Incentive Program to those patrons referred to in paragraph 50, supra. The patrons who received the cage disbursement checks, the check numbers and the amounts of the checks are listed as follows:

CAGE DISBURSEMENT

	PATRON NAME	CHECK	AMOUNT	DATE
1.	A. G.	9113	$ 30,000	11/21/86
2.	A. G.	9132	6,940	11/23/86
3.	A. C.	9165	17,640	11/30/86
4.	N. L.	9265	4,200	12/12/86
5.	K. N.	9416	210,000	01/31/87
6.	K. N.	9434	200,000	02/05/87
7.	K. N.	9435	10,000	02/05/87
8.	L. M.	9513	20,000	03/01/87
9.	N. L. (Payee: Caesars Atlantic City)	9633	3,500	04/08/87
10.	A. C.	9651	25,200	04/13/87
11.	S. W. C.	9790	16,500	05/24/87
12.	S. W. C.	9815	15,000	05/31/87

13.	A. C.	9878	8,500	06/14/87
14.	N. L.	9947	7,200	07/01/87
	(Payee: Caesars Boardwalk Regency)			
15.	L. M.	9959	20,000	07/03/87
16.	A. C.	10154	8,400	08/16/87
17.	L. M.	10296	20,000	09/27/87 [09/25/87]
18.	L. M.	10301	100,000	09/27/87
19.	L. M.	10302	50,000	09/27/87
20.	L. M.	10416	10,000	10/23/87
21.	K. N.	10418	50,000	10/23/87
22.	L. M.	10420	10,000	10/24/87 [10/23/87]
23.	L. M.	10426	100,000	10/24/87

56. Attached hereto as Joint Exhibits 62 through 84 are true and correct copies of the 23 cage disbursement checks issued by BRC from November 1, 1986, through October 24, 1987, pursuant to the Incentive Program.

57. Of the 23 cage disbursement checks issued by BRC to selected patrons pursuant to the Incentive Program, as described in paragraph 55, supra, and set forth in detail below, 13 of the checks were accepted back by BRC, 7 of the checks were voided by BRC and 3 of the checks were retained by the patron:

CAGE DISBURSEMENT

PATRON NAME	CHECK	DISPOSITION OF CHECK
1. A. G.	9113	Accepted by BRC
2. A. G.	9132	Accepted by BRC
3. A. C.	9165	Accepted by BRC
4. N. L.	9265	Accepted by BRC
5. K. N.	9416	Accepted by BRC
6. K. N.	9434	Voided
7. K. N.	9435	Voided
8. L. M.	9513	Voided
9. N. L. (Payee: Caesars Atlantic City)	9633	Accepted by BRC
10. A. C.	9651	Accepted by BRC
11. S. W. C.	9790	Accepted by BRC
12. S. W. C.	9815	Accepted by BRC
13. A. C.	9878	Accepted by BRC
14. N. L. (Payee: Caesars Boardwalk Regency)	9947	Accepted by BRC
15. L. M.	9959	Accepted by BRC

16. A. C.	10154	Voided
17. L. M.	10296	Retained by patron
18. L. M.	10301	Accepted by BRC
19. L. M.	10302	Voided
20. L. M.	10416	Retained by patron
21. K. N.	10418	Voided
22. L. M.	10420	Retained by patron
23. L. M.	10426	Voided

58. For the seven cage disbursement checks which were voided by BRC, as described in paragraph 57, supra, and set forth in detail below, the checks were replaced with cash, which was then used by the patron for 1) redeeming outstanding counterchecks, 2) establishing a front money deposit account or 3) the patron's personal use.

CAGE DISBURSEMENT

PATRON NAME	CHECK	USE OF CASH
1. K. N.	9434	Front Money Deposit
2. K. N.	9435	Patron's Personal Use
3. L. M.	9513	Patron's Personal Use
4. A. C.	10154	Patron's Personal Use
5. L. M.	10302	Patron's Personal Use

6. K. N.	10418	Front Money Deposit
7. L. M.	10426	Redemption of Countercheck

As I **FIND** the above Stipulation and Addendum to Stipulation of Facts were entered into freely, knowingly, intelligently and voluntarily, I accept the Stipulation and Addendum to Stipulation of Facts and **FIND** all the facts contained therein as **FACT.**

FINDINGS OF DISPUTED FACT

The only witness who testified in this case was Mr. Michael J. Walsh, assistant vice-president and comptroller of BRC, who testified for the respondent. I have had ample opportunity to assess the witness's credibility. I listened carefully to his testimony, making judgments about internal consistency, probability and reasonability, Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954), and during direct and cross-examination I observed the witness's demeanor, including his mannerisms, voice levels, anger, frustration and other such emotions not apparent on the written record. From the testimony, exhibits and especially my careful observations of the witness, I make the following Findings of Fact, which I believe to be true and credible without any reservation whatsoever:

1. In deciding whether or not a procedure or policy is an internal control, BRC has used as a guide the standard accounting concept of internal controls, which focuses on two main issues: (1) safeguarding the company's assets and (2) assuring that transactions occur within prescribed management directives (2T at 30; 3T at 62-63).[1] The usual process employed by BRC in reaching a decision on whether to submit any procedure or policy as an internal control is a two-step analysis. First, there is a review of N.J.A.C. 19:45 to determine if there is a specific requirement for the submission that might be implicated by the program under consideration (2T at 47; 3T at 64). Secondly, if there is no direct reference located within N.J.A.C. 19:45, then there is an analysis of whether any material component of the program under consideration would be an internal control and therefore should be submitted (2T at 47; 3T at 64-65).

[1] 2T and 3T refer to the Transcripts of Proceedings on January 28 and 29, 1988, respectively.

Due to BRC's perceived lack of guidance within the Act and the regulations in performing this analysis, Michael Walsh, the assistant vice-president and comptroller, has had to draw upon his experiences as an accountant, an audit manager and a CPA, with input from supervisors, corporate counsel and subordinates, as needed (2T at 34; 3T at 65).

2. In deciding whether or not to submit internal controls for the Incentive Program in the submission dated August 31, 1984 (R-1), which it was the responsibility of Mr. Walsh to prepare and submit (2T at 36-37, 3T at 78), Mr. Walsh followed the two-step analysis described above (2T at 46-47, 75-77 and 80-81). In particular, he initially determined that N.J.A.C. 19:45 did not require the submission of a marketing program such as the Incentive Program, which was not a complimentary program (2T at 26, 59-60; 3T at 95-98). His next step was to determine if any component of the program was material enough to require it to be submitted to the Commission, regardless of N.J.A.C. 19:45. When he analyzed the interaction between the casino cage and the program, he determined that all of the material components of that interaction were already included in his internal control submissions regarding the casino cage (2T at 47).

3. As set forth in exhibit R-4, and as explained in detail by Mr. Walsh, the Incentive Program is comprised of 20 separate steps that interact with the casino cage (2T at 47 et seq.). Several of those steps have sub-parts, depending on the individual facts that are presented at the time of the transaction. Of the 35 possible scenarios presented on exhibit R-4, N.J.A.C. 19:45 is applicable to 14 and all but one[2] of those 14 steps were addressed in the August 31, 1984 Internal Control Submissions ("I.C.S.") (R-1). An additional step on R-4 (Step 19.A.2) was not directly referred to in N.J.A.C. 19:45, but was considered sufficiently material by Mr. Walsh to be included in the 1984 I.C.S. (2T 112). The specific provisions within N.J.A.C. 19:45 and within BRC's 1984 I.C.S. for each of those steps are listed in R-4.

[2] Step 19.A.4. on R-4 was not covered in the 1984 I.C.S., even though it had been covered in the 1979 I.C.S. and also appears in the current I.C.S., as shown in R-4.

4. As indicated in R-4, 10 of these 14 steps were also covered in the 1979 I.C.S. (R-2). However, the entire 1979 I.C.S. was not available to either party in the proceeding and Mr. Walsh was unable to determine if the remaining four steps were also covered (2T at 106-107).

5. As also indicated in R-4, all 14 of these steps are included in the current I.C.S. (R-3).

6. Step 10 in R-4 indicates that casino personnel compute the incentive amount. In order to do so, casino personnel have followed two approaches: (1) they have referred to the computer record of patron ratings, which indicates wins and losses for all patrons who are rated and which has previously been submitted to and approved by the Commission; or (2) they have obtained the actual rating cards or slips which indicate wins and losses for all patrons who are rated, which forms have been submitted to and approved by the Commission. The original information contained in either the computer record or the rating slips was then transferred to the Incentive Agreement (2T at 71-72, 85-86, 91-94). The Incentive Agreement was never submitted to or approved by the Commission.

7. At various steps of the transaction (steps 15; 19.B.2; 19.C.8., and 20 on R-4) entries are made in the Main Bank Summary reflecting the transaction (R-4). The Main Bank Summary is a form which records activities within the main bank, which is part of the casino cage. In particular, the Main Bank Summary records the issuance of any disbursement check out of the cage. The Main Bank Summary form was submitted to and approved by the Commission and there was an internal control for it contained within the 1984 I.C.S. (2T 105-106; 3T 20-22). The Main Bank Summary has been utilized by BRC since the inception of its operation (June 1979) and is a standard accounting form (3T at 33-34).

8. At all times pertinent hereto, BRC substantially complied with its internal policies and procedures relative to the Incentive Program. Monies disbursed

by BRC to qualifying patrons pursuant to the Incentive Program appeared on BRC's internal financial statements as "Commission: Customer Incentives." The customer incentive payments appeared in the quarterly financial statements submitted to the Commission as a part of the aggregate total for "Casino Expenses." Check disbursements were recorded in the BRC Customer Reimbursement Check log as "incentive" or "incentive payment". (J-1, para. 43; 3T at 49-50).

9. The State of New Jerrsey receives tax on the full amount of the loss sustained by the Incentive Program patron. The loss is calculated without regard to the amount of the incentive payment received by the patron (2T at 115-116).

10. During the period encompassed by the Complaints, the Division conducted both routine and periodic audits of various aspects of BRC's cage functions, including annually, an Operations Report which summarized various audits conducted during the then-current casino license renewal period (J-1, para. 44). During the routine visits by Division agents to the Casino cage, which occurred once or twice a week at a minimum, all documents that pertain to the Incentive Program and the incentive transactions were available and the agents have specifically reviewed Incentive Program documents within the casino cage. (3T at 50-52).

11. In or about April 1983, Division Agent Richard Williamson conducted three interviews with BRC personnel and obtained materials relative to an Incentive Program begun at BRC in the latter part of 1982. His Investigation Report, dated May 3, 1983, stated the following:

CONCLUSION:

The foregoing description of the program represents the procedure Caesars is currently following. Since this is a marketing tool the details are subject to change rather easily. Caesars maintains the arrangements are very flexible and no paperwork is prepared prior to the distribution of the incentive payment from the cage. This procedure should be analyzed by the Division's legal staff to determine the legality (J-1, 3T 53).

12. Prior to the filing of the Complaint, the Division had not advised Caesars of any concerns or objections regarding the Incentive Program. (3T at 52). Knowing that the program had been investigated prior to his arrival at BRC, Mr. Walsh inferred from this lack of advice that his decisions in August, 1984 as to which internal controls to submit, were appropriate. Thus, the Division's audit and subsequent inaction was inferred by BRC to be a ratification of the legitimacy of the Incentive Program (3T at 53).

13. When the Division has advised Mr. Walsh of its concerns or objections regarding other programs or practices, he has routinely informed corporate counsel of the situation and has directed an immediate investigation into the subject to determine what steps should be taken to remedy the situation or to improve the procedures in question. The results of this investigation were then turned over to corporate counsel, who wrote a letter to the Division explaining what would be done to remedy the situation (3T at 55-56). Had the Division raised a concern or objection about the Incentive Program, Mr. Walsh would have followed this same practice (3T at 57).

14. In the scenario set forth in step 19.A.4 on R-4, wherein the patron has an outstanding debt, the patron endorses the incentive check and returns it to the Cage Supervisor so it can be applied against the debt. Any countercheck paid off by the patron is then returned to the patron. (R-4; 2T at 112-113). The countercheck is only returned to the patron after BRC has received an equivalent amount from the patron consisting of the incentive check, which the patron endorsed back to BRC, and either another check or cash received from the patron (2T at 113-114).

15. In the scenario set forth in step 19B on R-4, wherein the patron has no outstanding debt and wishes to receive cash, the patron endorses the incentive check, which is then "voided" by the Cage Supervisor, who then insures that the proper notation is made in the Main Bank Summary to record the voiding of the incentive check. (R-4; 2T at 116-117). The purpose of voiding the

check was to assure that there was an appropriate audit trail to show what had happened in this particular transaction, i.e., that the patron had received cash. (2T at 117; 3T at 16-18). The Main Bank Summary also shows that the check was voided and that cash was given to the patron. (2T at 121; 3T at 19-20, 23-25).

16. In the scenario set forth in step 19C on R-4, wherein the patron wishes to place the incentive check on deposit, the patron endorses the incentive check, which is then "voided" by the Cage Supervisor, who then insures that the proper notation is made in the Main Bank Summary to record the voiding of the incentive check (R-4; 3T at 35).

17. A total of seven checks were voided by BRC. On only four occasions did a patron receive cash when an incentive check was voided (J-2, 57; 3T at 5-7). On only three occasions did the patron place the incentive check on deposit (J-2, 58; 3T at 37).

18. BRC had no internal control on the disbursement of cash from the cage in general, and with regard to the Incentive Program in particular, because: (a) there is no subsection of N.J.A.C. 19:45 which deals with the procedure for the disbursement of cash (3T at 11-13), and (b) the procedure of actually disbursing the cash is so routine a part of a cashier's function (Id.).

19. From an accounting perspective, BRC's incentive check is the equivalent of cash in the redemption transaction because the check is completely under the control of BRC and there is no outside risk that the check will "go bad" (3T at 105-106). Because the incentive check is drawn on BRC's bank account, is drawn by BRC personnel, is controlled by the casino cage and there is always a balance in the BRC account, the check is, in essence, cash to BRC (3T at 107, 108). There is, therefore, a very clear distinction between a check that is written by BRC and a check that is written by a patron, whose balance may or may not be sufficient to cover the check and who may or may not be authorized to sign the check (3T at 108, 115-116).

20. BRC utilized three forms that served as the Incentive Agreement during the

course of the Incentive Program, which are described below.

a. The first form, entitled "Authorization for Foreign Casino Customer Incentive Play Payment," provided for a payment to patrons who "met the qualification criteria of [the] caisno, which included a cash deposit." The form also provided for a payment to the participating patron which was based upon a percentage of the amount of cash placed on deposit at BRC by the patron. This form was used by BRC during the period from March 8, 1983 through October 31, 1983. During that period of time, 11 Incentive Program payments were made to BRC patrons and were memorialized in the above-described form.

b. The second form used by BRC is also entitled "Authorization for Foreign Casino Customer Incentive Plan Payment," and provided for the payment to the patron of an amount based upon the patron's outstanding credit balance to BRC. The specific relevant language contained in the second form provided as follows:

> The original amount due at the time this authorization was made was $_____.
>
> I hereby endorse this Company's check, paid in the amount of $_____, which will be credited to the outstanding balance of my account when my check(s) is paid by my bank.

The second form was used by BRC during the period from March 8, 1983 through May 20, 1984. During that period, 15 Incentive Program payments were made to BRC patrons and were memorialized in the above-described form.

c. The third and most recent form utilized by BRC is entitled "Incentive Agreement." This form is divided into three parts. The first part sets forth the "Basis on Which [the] Incentive is Determined." The first part also contains signature lines for the patron and the BRC representative authorizing the agreement. The second part of the Incentive Agreement

sets forth the results of the patron's gaming activity, including the "Cash Deposit Amount," "Credit Line/Issued," "Total Drop," "Casino Patron Win (Loss)," "Length of Play/Average Bet" and "Incentive Reimbursement." The second part of the form also contains a signature line for the BRC representative authorizing the payment. The third part of the Incentive Agreement is BRC's record of the payment to the patron including the amount paid, the check number and the signature of the BRC representative completing the payment. The Incentive Agreement was used by BRC during the period form August 4, 1984 through October 24, 1987. During that period, 64 Incentive Program payments were made to BRC patrons. Each of the payments was based upon a percentage of the patrons' gambling losses.

21. As previously stated in the stipulated facts, at no time during the conduct of Incentive Program did BRC submit any of the procedures attendant to the Incentive Program to the Commission or Division for review. Additionally, none of the forms utilized by BRC to effectuate the Incentive Agreements was ever submitted to the Commission or the Division for review, nor were any of the forms ever approved by the Commission.

DISCUSSION

I. DOES BRC'S INCENTIVE PROGRAM VIOLATE N.J.S.A. 5:12-101 a AND c AND N.J.A.C. 19:45-1.25(a)?

The Division has charged BRC with violations of N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a) in conducting the Incentive Program during the period from March 1983 through October 1987. During that period of time, BRC entered into 90 Incentive Agreements with selected preferred patrons. Each of the Incentive Agreements provided for the payment of an amount of money that was based on either the participating patron's gambling losses, the patron's outstanding debt to the casino or the patron's cash deposit. For present purposes the same legal conclusions apply to each phase of the Incentive Program.

The Division has charged BRC with violating the credit provisions of the Act and regulations arising out of the Incentive Program transactions conducted between BRC and the participating BRC patrons. Each transaction substantially followed the same pattern. Prior to the participating patron's arrival, BRC marketing personnel discussed with the patrons the terms upon which an Incentive Payment would be given to the patron. Upon the patron's arrival at BRC, an Incentive Agreement was prepared by BRC personnel and signed by the patron and a BRC representative. Following the completion of the patron's gambling activity, the patron received an Incentive Payment if he satisfied the terms set forth in the Incentive Agreement. Whether the patron satisfied the terms of agreement was based on the player's rating information, a record of the patron's gambling activity which is maintained by BRC.

If the patron met the terms of the agreement, the player rating information was then entered onto the Incentive Agreement. The Incentive Payment was then calculated based on the player rating information and the payment was authorized by BRC personnel. A BRC cage disbursement check was then prepared in the name of the patron although in some instances the check was issued to BRC. Information regarding the issuance of the check to the patron was also entered onto the Incentive Agreement.

For checks prepared in the name of the patron, the patron endorsed the check and it was then used in the redemption of the patron's outstanding counter checks. The cage disbursement checks issued to BRC did not require the patron's endorsement but were also used in the redemption of the patron's counterchecks.

As a starting point in analyzing Section 101 of the Act and the accompanying regulation and in determining whether violations occurred in this matter, it is instructive to briefly review the origins of casino credit in New Jersey. It has been recognized by the courts that "practices and procedures involved with the extension of credit by the casinos are among the most sensitive aspects of casino operations." Playboy - Elsinore Associates v. Strauss, 189 N.J. Super 185, 191 (Law Div. 1983); see also In the Matter of the Petition Of Adamar Of New Jersey, Inc., Requesting a Declaratory Ruling Concerning The Off-Site Acceptance of Payments On Non-Returned Counter Checks, Etc., 222 N.J. Super

464, 470 (App. Div. 1988). The Commission has also commented on the regulation of casino credit in State of New Jersey v. Boardwalk Regency Corporation, OAL Dkt. Nos. CCC 7452-82 and CCC 6325-81; Agency Dkt. No. 81-32, as follows:

> [t]he clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in those operations. See, Resorts International Hotel, Inc. v. Solomone, 178 N.J. Super. 598 (App. Div. 1981) . . . The regulations promulgated under §101 are equally detailed in their requirements for the extension and control of credit. See, N.J.A.C. 19:45-1.25 to 1.30. [Final Decision, Casino Control Commission (Jan. 4, 1983) at 11]

The strict regulation of casino credit which has been recognized by the Commission and the courts finds its origin in the recommendations of two groups which advocated either an outright prohibition of casino credit, (see Report and Recommendation on Casino Gambling by the Commission of Investigation of the State of New Jersey, dated April 7, 1977 ("SCI Report")), or the extension of casino credit under tightly controlled regulations, (see Second Interim Report of the Governor's Staff Policy Group on Casino Gambling, dated February 14, 1977 ("Second Interim Report")). The Division asserts that based upon the clear intent of the legislature to require strict regulation of casino credit under the Act, it is apparent that the Incentive Program violates N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a).

N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1 both provide that "[e]xcept as otherwise provided in this section, no casino licensee or any person licensed under the Casino Control Act . . . shall":

> [c]ash 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; . . .

The statutory and regulatory language quoted above reflects the policy making groups' concerns over the availibility of casino credit to casino patrons. The State Commission of Investigation opposed casino credit to prevent skimming, to guard against unsavory debt collection procedures and to provide player protection. See SCI Report at 2E-3E. The Governor's Staff Policy Group shared the same concerns, balanced against those concerns the advantages offered by a credit system and concluded in its

recommendations, "that a system of check-cashing within verified credit limits would accommodate the legitimate interests of both casinos and players and would minimize some of the troubling features of open or 'marker' credit" (Second Interim Report at 34). As a result, the legislature adopted "particularized and extensive requirements governing credit transactions." Playboy Elsinore Associates, 189 N.J. Super at 191.

Pursuant to Incentive Program procedures, BRC issued Incentive Payments in the form of BRC cage disbursement checks to the participating patrons who met the terms of the Incentive Agreement. The check was then accepted back by BRC cage personnel and used in the redemption of the patron's outstanding counter checks or for the purpose of establishing a front money account. According to BRC's policies and procedures, the Incentive Payment check "must be applied towards any outstanding indebtedness", although as of September 25, 1987, it appears that BRC revised its policies to some extent.[3] In some instances, the Incentive Payment check was voided by BRC cage personnel and exchanged for cash. The cash was then used in the patron's redemption transaction, to establish a front money account or, in some instances, given directly to the patron.

Through the above-described transaction, BRC has advanced to participating patrons the funds which are used in the redemption of the patrons' outstanding counter checks or used in establishing front money accounts. The Incentive Payment check is in the patron's possession only long enough to obtain the patron's endorsement. BRC then accepts back the check from the patron and applies it to the patron's redemption transaction or to establish a front money account for the patron.

When the check is voided by BRC personnel, the transaction takes on the appearance of check cashing. The check is voided following acceptance by BRC and the cash is then used in the redemption transaction or to establish a front money account. Both transactions fall squarely within the language of N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1, since BRC has either advanced something of value to the patron to enable the

[3] Under cover of memorandum dated September 25, 1987 from Michael J. Walsh, BRC revised the Incentive Program Policies and Procedures to provide that the patron was not required to apply the cage disbursement check or cash to the outstanding debt, although the patron was free to use the Incentive Payment in the redemption transaction (see J-86).

patron to pay off debts incurred through the patron's gaming activity as a player or cashed a check which the patron then used to take part in gaming activity.

Since the check or the proceeds of the voided check are both used in the redemption of the patron's counter check, it is clear that N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.24(a)1 have been violated during the course of the Incentive Program transactions. The statutory and regulatory language prohibits the cashing of a check or advancing of something of value to "enable a person to engage in gaming activity as a player." BRC argues that the Incentive Payments which are issued following the patron's gambling activity do not "enable" a player to engage in gaming activity as a player. However, acceptance of BRC's position would create an artificial distinction in the law which would allow a casino to circumvent the strict regulation of casino credit.

For example, the Incentive Payment checks issued to patron K. N. on February 5, 1987 and October 23, 1987, were voided and the proceeds were deposited with BRC as front money.[4] In establishing a front money account which could have been subsequently used for gambling activity, BRC provided the funds necessary to enable Mr. N. to engage in gaming activity as a player.

Similarly, the same result occurs when a patron with an approved credit account gambles pursuant to his approved credit line, incurs an outstanding casino credit debt and is then provided with the funds used to satisfy his debt. For patrons gambling pursuant to their approved credit accounts, the phrase "engage in gaming activity as a player" necessarily includes the entire transaction, i.e. gambling at the tables pursuant to approved credit lines and subsequent settlement of the debt through the redemption transaction. The front money player, on the other hand, deposits his funds with the casino and then withdraws the funds for play at the gaming tables. As one can see, there is little or no difference in the two transactions, particularly where the patron knows that he will be receiving the funds to be used in the redemption transaction. The participating BRC patrons knew they would receive a payment that would be used to pay off their outstanding casino debts. The only difference between front money patrons and credit

[4] Pursuant to N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.24, a patron may establish an account with the casino to be held for safekeeping purposes or for withdrawal and exchange for chips at the gaming tables.

patrons is that credit patrons do not put their casino-provided funds to use until after completing their gambling activity at the gaming tables. There is no doubt, however, that they will be receiving an Incentive Payment to use in their redemption transaction. The Incentive Agreement entered before gambling assures the patrons that reimbursement for gambling losses is forthcoming. To recognize a distinction based upon the time that the patron receives the payment creates artificial distinctions between the two transactions and inconsistent results in the interpretation and enforcement of the credit provisions of the Act. Cf. Union County Board of Freeholders v. Union County Park Commission, 41 N.J. 333, 341 (1964) — In construing a statute, every effort should be exerted to avoid an anomalous result.

BRC also argues that the evils which the Legislature hoped to prevent in requiring strictly regulated credit practices namely, skimming, player protection and strongarm methods of debt collection, are not implicated by the Incentive Program. BRC further contends that since the Incentive Program is "not offered to the general public . . . the evil sought to be curbed by the legislature in passing credit extension limitations, namely, prevention of the incurrence of debts by those unable to afford such losses, is not present."

Although it appears that the patrons offered participation in the Incentive Program have substantial resources to satisfy their outstanding casino debts, there is nothing within the provisions of N.J.S.A. 5:12-101 or N.J.A.C. 19:45-1.25 to suggest that the statutory and regulatory requirements for casino credit do not apply to all patrons. (Cf. N.J.S.A. 5:12-102(m).) Therefore, regardless of the patrons' preferred status, the absence of any statutory or regulatory language to the contrary establishes that the strict regulation of casino credit applies equally to any transactions with all casino patrons. Simply because a patron does not need the protection intended by the legislature in enacting Section 101, does not except a casino from adhering to the strict statutory requirements. BRC may not decide which transactions are subject to the provisions of the Act and which transactions are not. To allow a casino licensee to decide when and under what circumstances the law applies would cause havoc to the regulatory scheme of casino enforcement.

The Division has also charged that the Incentive Program violates N.J.S.A. 5:12-101a(2) and N.J.A.C. 19:45-1.25(a)2. N.J.S.A. 5:12-101a(2) provides that no casino licensee shall:

> [r]elease 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. [emphasis added].

Similarly, N.J.A.C. 19:45-1.25(a)2, provides that a casino licensee shall not:

> [r]elease or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 19:45-1.29.[5] [emphasis added].

The Incentive Program provides a mechanism by which BRC provides selected patrons with an amount which is calculated as a percentage of the patrons' gaming losses and which is used to pay off outstanding casino credit debts or to deposit with BRC for future play at the gaming tables. The Division argues that by providing the patron with the funds to satisfy a portion of his outstanding casino debt BRC has, in effect, released or discharged a portion of the debt owed to the casino by the patron. Moreover, the release or discharge is agreed to prior to the gambling activity with the knowledge and participation of BRC.

It is clear from the language of N.J.S.A. 5:12-101a(2) as limited by N.J.A.C. 19:45-1.25(a)2 that a casino cannot release or discharge any debt without first establishing that the debt is uncollectible. However, there is nothing in the record to indicate that any of the patrons participating in the Incentive Program ever had uncollectible debts. In fact, BRC states that the exact opposite is true. Also, there are no written records maintained by BRC to indicate that counter checks were deposited and returned, that "collection efforts" were undertaken and that returned checks were then "considered uncollectible." N.J.A.C. 19:45-1.28(a); N.J.A.C. 19:45-1.29(a) and (j). Since BRC has not established the threshold requirement of uncollectibility, the patrons' debts could not be released or discharged.

[5] N.J.A.C. 19:45-1.28 and N.J.A.C. 19:45-1.29 set forth extensive procedures for casino licensees to follow for the deposit of checks and collection efforts of dishonored checks.

BRC's contention ignores the plain language of the regulation which provides that "a casino licensee shall not release or discharge any debt which is uncollectible . . . without maintaining a written record. . ." (emphasis added). In addition, BRC's argument is flawed in that it distorts the proper sequence established in the regulations for allowing casino licensees to write-off casino debts. After counter checks have been deposited and returned, a casino is required to pursue collection efforts. Following "reasonable collection efforts," the debt may be considered uncollectible and charged to the casino's allowance for uncollectible patrons' checks. N.J.A.C. 19:45-1.29(j). Thereafter, a casino is entitled to a deduction for the uncollectible checks in an amount established by the provisions of N.J.S.A. 5:12-24. In reviewing the sequence established in the regulations it is clear that a debt may be considered uncollectible only after collection efforts have been pursued and the collection efforts have been documented by the casino. Moreover, N.J.S.A. 5:12-101a(2) and N.J.A.C. 19:45-1.25(a)2 provide that a casino license has the burden of first proving uncollectibility before releasing the patron from his obligation to the casino. As the last event in the sequence, the casino avoids an additional hardship of being taxed on uncollectible revenues through the legislature's providing for an uncollectible debt deduction. See N.J.S.A. 5:12-24 and N.J.A.C. 19:40-1.2.

BRC's decision not to deduct the Incentive Payments from gross revenue does not lead to the conclusion that N.J.S.A. 5:12-101a(2) and N.J.A.C. 19:45-1.25(a)2 do not apply to the instant matter. According to BRC's own statements, the debts are not uncollectible. Since the debts are not uncollectible, BRC cannot release or discharge the patrons' debts. The distinction behind the public policy in allowing a casino to release or discharge an uncollectible debt while not allowing a casino to release or discharge a collectible debt is very apparent. To allow a casino to release or discharge a collectible debt would in effect be similar to an extension of credit, and all of the concerns of the SCI, the Governor's Staff Policy Group, the court in Playboy, and the Commission in the prior BRC case would be applicable to such a transaction. Therefore, it is clear that the Incentive Payments which, in effect, serve to release or discharge patron debts, violate N.J.S.A. 5:12-101a(2) and N.J.A.C. 19:45-1.24(a)2.

In addition, BRC has violated N.J.S.A. 5:12-101c in allowing the participating

patrons to redeem their outstanding counter checks in amounts less than the amounts for which the checks were drawn. N.J.S.A. 5:12-101c provides in pertinent part as follows:

> . . . 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;. . .

In each instance where BRC issued an Incentive Payment to a patron, BRC provided the patron with a percentage of the funds necessary to redeem counter checks. The drawer of the counter check did not need the full amount to redeem his counter checks.

For purposes of illustration, it is helpful to review the circumstances surrounding the Incentive Agreement entered into between BRC and patron N. L. on May 21, 1986. The Incentive Payment was to be calculated on the basis of 10 percent of losses over $50,000. The Incentive Agreement also indicates that Mr. L. lost $60,000 as a result of his gambling activity. The amount authorized by BRC to be paid to Mr. L. was $6,000. BRC cage disbursement check number 8484, dated June 9, 1986, was issued to Mr. L.

Mr. L. is a credit player at BRC with an approved credit line of $200,000. According to the Incentive Agreement dated May 21, 1986, Mr. L.'s gambling losses and his outstanding credit balance amounted to $60,000. The Incentive Agreement dated May 21, 1986, also contains the following statement which was signed by Mr. L.:

> I hereby authorized Caesars Atlantic City Casino to apply my Incentive Payment Check to the balance due on my markers.

Thereafter, Mr. L's Incentive Payment Check was accepted and deposited by BRC on June 9, 1988.

Although Mr. L. had incurred a gambling debt of $60,000 at BRC, he was only responsible for paying $54,000 to fully satisfy the debt. The balance of $6,000 in the form of an Incentive Payment was essentially a write-off or discharge of the debt balance. The vehicle utilized by BRC to provide the patron with the funds to redeem the full amount of his counter checks for less than the amount for which the counter checks were drawn was the Incentive Agreement between BRC and Mr. L. and the subsequent Incentive Payment. In effect, Mr. L. was able to satisfy 100 percent of his outstanding debt to BRC by presenting only 90 percent of the amount due. This arrangement violates N.J.S.A. 5:12-101(c).

Based upon the foregoing, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's Incentive Program violated the provisions of N.J.S.A. 5:12-101a(1) and (2) and c and N.J.A.C. 19:45-1.25(a) 1 and 2.

II. DID BRC VIOLATE N.J.S.A. 5:12-99 AND N.J.A.C. 19:45-1.3 BY ADOPTING AND IMPLEMENTING THE INCENTIVE PROGRAM BY FAILING TO SUBMIT THE PROGRAM FOR REVIEW AND APPROVAL BY THE COMMISSION?

The Division has also charged BRC with violating N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 by adopting and implementing the Incentive Program without first submitting it to the Commission for review and approval and to the Division for review.

N.J.S.A. 5:12-99 provides, in pertinent part, as follows:

> 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 120 days before gaming operations are to commence or at least 90 days 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. . .
>
> . . . .
>
> 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 submitted 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 license 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. [emphasis added]
>
> . . . .

N.J.A.C. 19:45-1.3 provides, in pertinent part, as follows:

(a) Each casino licensee shall submit to the Commission and Division a a description of its system of internal procedures and administrative and accounting controls as part of the requirement of Section 99 of the Casino Control Act. Such submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee.

(b) The Commission shall review each submission required by (a) above and with the advice of the Division shall determine whether it conforms to the requirements of the Casino Control Act and to this regulation and whether the system submitted provides adequate and effective controls for the operations of the casino licensee. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee, who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee of same. No casino licensee shall commence gaming operations, unless and until such system of controls is approved by the Commission.

(c) Each casino licensee shall submit to the Commission and Division any changes to the system of internal procedures and administrative and accounting controls previously determined by the Commission in (b) above to be adequate in all respects at least 90 days before the changes are to become effective, unless otherwise directed by the Commission. The proposed changes shall be submitted to the Commission and such changes may be approved or disapproved by the Chairman unless any Commissioner indicates the changes should be considered by the entire Commission in which case such changes shall be so considered. No casino licensee shall alter its internal controls unless and until such changes are approved.

. . . .

The statutory and regulatory submission and approval requirements for internal control procedures have been recognized by the courts to be "in accordance with the provisions of the Casino Control Act requiring prior approval of all systems of internal procedures and administrative and accounting controls . . ." Playboy - Elsinore Associates, v. Strauss 189 N.J. Super. at 187. The Commission has also noted the significance of the internal control review and approval process in a prior decision involving BRC. In regard to State of New Jersey v. Boardwalk Regency Corporation, et al., OAL Dkt. No. CCC 3916-80, Agency Dkt. No. 80-10, decided May 18, 1981, the

Commission stated that it is not:

> 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. [Interim Commission Decision, July 9, 1981 at 15. [emphasis added]

N.J.S.A. 5:12-99 expressly provides that: "[e]ach such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:

> (1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;
>
> (2) Procedures, forms, and, where appropriate, formulas covering the calculation of hold percentages, revenue drop, expense and overhead schedules, complimentary services, junkets, cash equivalent transactions, salary structure and personnel practices;
>
> . . . .
>
> (4) Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the pay-off of jackpots; and the recording of transactions pertaining to gaming operations;
>
> . . . .
>
> (13) Procedures for the cashing and recordation of checks exchanged by casino patrons; . . . [emphasis added]

Based on the express language of N.J.S.A. 5:12-99, it is clear that BRC was required to submit to the Commission the accounting and internal control procedures of the Incentive Program prior to the adoption and implementation of the program. Sensitive areas of casino operations are involved in the Incentive Program including the issuance of cage disbursement checks to patrons and the redemption of patrons' counter checks. While the vast majority of the procedures involved in the Incentive Program are covered

in other internal control submissions of BRC which have been approved by the Commission, several of the steps, particularly the preliminary steps such as the three Incentive Play Payment, Plan Payment, and Agreement forms, the procedure for issuing a casino's own check and then voiding it, and the overall concept of the program were never submitted to the Commission for review or approval or the Division for review. Failure to include the regulatory authorities in the review and approval process strikes against the fundamental concepts of strict regulation and control of the casino industry as intended by the legislature. See N.J.S.A. 5:12-1(b). This is particularly true where the legislature expressly vests the Commission with final approval of all internal control procedures of casino licensees.

BRC contends that it was not required to submit the accounting and internal control procedures because the Incentive Program procedures are no different from BRC's currently approved procedures. It is BRC's position that "BRC's internal controls, as previously approved by the Commission, are effective in preventing the problems feared." In essence, BRC has decided that each aspect of the Incentive Program procedures have been previously approved by the Commission. This is not the case.

In addition, BRC argues that section 99 of the Act leaves a casino licensee with no guidance in determining what internal procedures and accounting controls should be submitted. BRC argues that there is no specific definition of what constitutes "internal procedures and administrative and accounting controls." While there are certain enumerated instances when internal control systems must be submitted (see N.J.S.A. 5:12-99(a)(1)-(17)), there is no guidance offered as to what other activities are covered. Without such guidance, therefore, the casino licensee is largely left to its own devices and experience to determine what internal procedures and accounting controls should be submitted or need not be submitted for those activities that are not precisely covered in the Act or regulation. BRC further states that the concept that has evolved in the industry and at BRC in determining whether to submit an internal control procedure for a particular event, act or program is to determine whether or not such a control is necessary to safeguard the assets of the licensee and to provide a sufficient "paper trail" to explain the event, act or program. BRC asserts that the usage of a new form in

connection with a marketing program does not necessitate the submission of the procedures associated with that program to the Commission unless the program's implementation is coupled with a change in the previously submitted internal controls. As provided in N.J.A.C. 19:45-1.5(a) and (c), the information required to be placed on a "form" and submitted to the Commission for approval is only that information "required by this chapter." The Incentive Agreement contains information that is gathered from ratings slips whose form has already been submitted to and approved by the Commission. The information, such as the amount of a patron's gaming losses is merely recorded on the Incentive Agreement from a form that has previously been approved by the Commission. Unfortunately, BRC's argument ignores both the express language and the intent of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

N.J.S.A. 5:12-99 specifically lists 17 comprehensive areas of internal control procedures which must be submitted to the Commission. The areas listed involve the procedures for all accounting controls, all procedures within the cashier's cage, all check cashing procedures and all procedures for the exchange of checks (emphasis added). In addition to providing a comprehensive listing, the statute also provides that the licensee's internal control submission shall not be limited to the areas listed in Section 99. Thus, clear guidance has been provided by the legislature; namely, all procedures concerning casino operations must be submitted to the Commission for review and approval. In addition, the Act specifically requires the submission of standardized forms, procedures and forms used for items such as complimentary services and cash equivalent transactions, and cage procedures for receipt or disbursal of cash, cash equivalents, and the cashing of checks. All internal procedures and forms must be approved by the Commission. As early as September 1983, BRC had written guidelines to be employed in the conduct of the Incentive Program (J-34). In-house policies and procedures were drafted in May 1984 (J-35), and they have been revised four times since (J-36 through J-39). None of these procedures has ever been submitted to the Commission or the Division. It is clear from prior Commission decisions that BRC knew or should have known that it could not implement new programs, procedures, or forms, such as the Incentive Program, without Commission approval. See State of New Jersey v. Boardwalk Regency Corporation; see also, N.J.S.A. 5:12-130g.

The comprehensive language of N.J.S.A. 5:12-99 makes it clear that the legislature intended the Commission to have final comment as to whether a licensee's internal control procedures comply with the requirements of the Act and regulations. Moreover, the all-encompassing language of N.J.S.A. 5:12-99, particularly subsection (b) which states that the Commission "shall determine whether [the submission] conforms to the requirements of [the] Act and to the regulations promulgated thereunder. . ." (emphasis added) clearly establishes that the Commission is to decide whether the procedures comply with the Act. Neither the express statutory or regulatory language nor BRC's prior involvement in a Commission decision involving this same issue can support BRC's contention that it was left to its own devices. What is clear is that BRC was required to seek guidance from the Commission prior to its implementing the Incentive Program.

In addition, N.J.S.A. 5:12-99b also provides that: "[n]o casino licensee shall. . . alter in fact its internal controls, unless and until such system of controls is approved by the commission." As noted above, the Incentive Program has been revised various times since its inception. The Incentive Payments were originally based upon the patron's front money play. The program was then changed so that payments were based upon the patrons' outstanding casino debts and then upon the patrons' gaming losses. Most recently, since the filing of the Division's first complaint, BRC began offering certain patrons an "Incentive for Play," which were payments made upon the patron's arrival, before the patron engaged in gaming. Despite the various changes made to the Incentive Program, BRC did not submit any of the changes to the Commission.

One aspect of the Incentive Program procedures which bears particular note is the voiding procedure utilized by BRC following acceptance of the Incentive Payment checks. In procedures described by Michael Walsh during the hearing, BRC voided the Incentive Payment check and either gave cash to the patron or used the cash for the redemption of counter checks or to establish a front money account. Prior to voiding, the check was presented to the patron. The patron then endorsed the check and returned it to the cage personnel who then voided the check. Mr. Walsh testified that it was his opinion that voiding procedures are not set forth anywhere in the Act and, for that reason, BRC did not submit the procedures to the Commission.

The voiding procedure described by Mr. Walsh must be viewed as either the exchange of a check for a front money deposit or the cashing of a check. Either procedure must be submitted for Commission review and approval pursuant to N.J.S.A. 5:12-99(a)(4) or (a)(13). The failure to submit this aspect of the Incentive Program would alone be sufficient to impose liability under N.J.S.A. 5:12-99. While the vast majority of the procedures used by the BRC in the Incentive Program were covered by previous internal control submissions, certain aspects of the program are not covered by those submissions and the overall concept of the program was also never submitted. While BRC refers to the program as a "marketing program", the aspects of the program directly fall under the provisions of N.J.S.A. 5:12-99 and N.J.A.C 19:45-1.3. As such, the failure of BRC to submit all aspects of the Incentive Program and the overall concept of the program to the Commission for review and approval and to the Division for review constitutes a violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. The bottom line is in light of the strict regulatory nature of the Act—all systems of internal procedures, programs, forms, and administrative and accounting controls must be submitted to the Commission for approval. If there is any doubt. . . submit it!

Based upon the foregoing, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the respondent's failure to submit all aspects of the Incentive Program and the overal concept of the program to the Commisison for review and approval and to the Division for review constitutes a violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

III. DID BRC VIOLATE N.J.S.A. 5:12-104a(1) BY ENTERING INTO INCENTIVE AGREEMENTS WHICH PROVIDED FOR PAYMENTS BASED ON CASINO GAMING ACTIVITY?

The Division has charged BRC with violating N.J.S.A. 5:12-104a(1) in entering into agreements with casino patrons which provided for payments to the patrons based upon the patrons' gambling activity at BRC. N.J.S.A. 5:12-104a(1) provides as follows:

> a. (1) Unless otherwise provided in this subsection, no agreement which provides for the payment, however defined, of any direct or indirect interest, percentage or share of any money or property gambled at a casino or derived from casino gaming activity or of any such interest, percentage, or share of any revenues, profits or earnings of a casino shall be lawful.

Subsections 2 through 5 of N.J.S.A. 5:12-104a set forth the types of agreements which are excepted from the above-quoted provision. The exceptions to the requirements of Section 104a(1) include agreements which provide for the payment of a fixed sum (subsection (2)); agreements between a casino and its employees providing for profit sharing (subsection (3)); lease agreements (subsection (4)); and agreements between a casino licensee and a holding company or intermediary company of the licensee (subsection (5)). The Incentive Agreements between BRC and the participating patrons are not within any of the exceptions of section 104. A naked reading of section 104a would at first glance appear to make BRC's Incentive Agreements unlawful.

An elementary tenet of statutory analysis is that statutory interpretation begins with a reading of the statutory language. See Hackensack Bd. of Education v. Hackensack 63 N.J. Super. 560, 569 (App. Div. 1960). In addition, "[a]ll parts of the statute must be read so that they are in alignment with the intent of the entire act" Seatrain Lines, Inc. v. Medina, 39 N.J. 222, 226-227 (1963) (citations omitted).

Section 104a(1) prohibits a sharing by the casino licensee of his license or any property interest in a casino. The legislative history and the public policy mandates of the Act reveal that the concern of the legislature in enacting 104a(1) was to guarantee that the Commission would have ultimate control over the persons to be involved in casino operations. Unlike those agreements to which the statute is directed, the agreements entered pursuant to the Incentive Program are only marketing tools between the casino and patrons and do not enable patrons to infiltrate the casino industry and reap benefits in the form of a sharing of the profits, interest or license of BRC.

To maintain the integrity of casino operations, the legislature provided that anyone seeking an interest in the casino industry, whether as a casino licensee, a casino employee or a casino service industry, would be required to meet the licensing requirements of the Act and of the Commission as set forth in the regulations. Essentially, these persons must be licensed prior to engaging in any activities connected with the casino industry. Section 104 and its subparts were enacted to insure that such licensing requirements would be complied with. This conclusion is amply supported by reading all of the provisions in section 104. As stated in section "c,": "[n]othing in this act shall be deemed to permit the transfer of any license, or any interest in any license, or any certificate of compliance or any commitment or reservation."

The other sections and subsections clarify this mandate and attempt to identify the types of agreements which are unlawful. Indeed, a reading of the entire text of section 104 reveals the legislature's concern for those persons doing business with, or seeking an interest in, the casino (emphasis added). Section 104a(2) discusses the characteristics of "receipts, rentals or charges for real property, personal property or services." Section 104a(3) deals with employee profit sharing plans. Section 104a(4) is concerned with agreements to lease an "approved hotel building or the land thereunder" and "agreements for the complete management of a casino." Section 104a(5) sets forth requirements for "agreements which provide for percentage charges between the casino licensee and a holding company or intermediary company of the casino licensee."

The legislative mandate is set forth with even more clarity in section 104b as it read prior to January 4, 1988, which requires a casino licensee to present to the Commission "any written or unwritten agreement regarding the realty of, or any business or person doing business with or on the premises of, its casino hotel facility." This section goes on to provide:

> Every agreement with a casino hotel shall be deemed to include a provision for its termination without liability on the part of the licensee, if the commission shall disapprove of the business or of any person associated therewith, by reason of a finding that said business or person is unsuitable to be associated with a casino enterprise in accordance with the regulations promulgated under this act. [emphasis added]

In short, all of the provisions of section 104 deal with issues that far transcend the concerns, if any, raised by the marketing strategy at issue in this matter. Section 104 was written to regulate transactions between casinos and businesses or other third parties doing business with the casinos, not to regulate transactions between casinos and its patrons. Other sections of the Act regulate those transactions.

Any doubt as to the meaning of section 104 and the intentions of the legislature in enacting it can be dispelled by a review of the pertinent legislative history. The Senate Judiciary Committee statement to the bill lends support to the argument that a program such as BRC's does not impinge upon the Act's prohibitions:

> Section 34 [N.J.S.A. 5:12-104(a)] prohibits percentage contracts, which

> provide for payment of an interest or percentage or share of [a] casino, unless (a) they provide profit-sharing for casino employees or casino key employees; (b) such contracts are part of an agreement for the leasing of a casino-hotel or the land under it and the agreement satisfies the conditions discussed in connection with section 18; (c) such contracts are for management of a casino and such contracts meet the condition discussed in connection with section 18; (d) agreements between a casino licensee and its holding company or an intermediary company. [Senate Judiciary Statement to Senate Comm. Subst. for Assembly, No. 3485 (Nov. 29, 1979)]

Clearly, patrons who receive the benefit of BRC's Incentive Program do not have percentage contracts with BRC in the form envisioned by the legislature and they do not receive a percentage, share or interest in the casino by their involvement in the program. The patrons cannot be said to have part ownership of the casino nor to be circumventing the licensing provisions of the Act, the two evils that the legislature specifically sought to curb by passing the amended version of section 104a.

A review of the public hearings on section 104 further supports the arguments advanced by BRC herein. As stated in the Public Hearing before the Assembly State Government, Federal and Interstate Relations and Verterns Affairs Committee, Sept. 27, 1978, at 4;

> Section 104 . . . requires each casino licensee to submit to the Commission every agreement with any person doing business with its casino hotel facility. By means of these provisions, the Commission obtains direct control over and can assure the integrity of all businesses dealing with the casino hotel facility [emphasis added].

These mandates may also be gleaned from the SCI Report, which discusses the concerns of the persons who drafted the Act. As recommended by the State Commission on Investigation:

> A provision should be enacted prohibiting anyone from exercising any voice, control or authority in or over a casino's operations unless individually licensed by the casino.
>
> . . . .
>
> Those who have the authority to affect a casino's operations in any way must also be subject to the scrutiny of a licensing process. [Id. at 15-16B, 18B]

It follows, therefore, that Section 104 was passed to insure that the licensing provisions of the Act would not be circumvented by casinos and that the Commission would retain control over all those involved in Atlantic City casino operations. These concerns do not exist in the situation at hand and the BRC program does not raise the

problem sought to be addressed by section 104a. The Incentive Agreements were not business relationships affecting a casino's operations. They were agreements between BRC and patrons in order to entice patrons to gamble at BRC. These are not the type of agreements regulated by section 104.

Based upon the foregoing, I **CONCLUDE** that the Division has not established, by a preponderance of the credible evidence, that the respondent's Incentive Program violates N.J.S.A. 5:12-104a.

IV. DID BRC VIOLATE N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 AND A PRIOR COMMISSION ORDER BY ACCEPTING 84 CAGE DISBURSEMENT CHECKS?

The Division has also charged BRC with violating N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25 and a prior Commission order dated November 15, 1982, which memorialized a Commission decision of March 25, 1982.

These violations arise out of the Incentive Program procedure in which the patron endorsed the Incentive Check and returned it to the BRC cage personnel for the purpose of redeeming counterchecks, or establishing a front money account or in exchange for cash. During the period of time from March 8, 1983 through October 24, 1987, BRC accepted from BRC patrons 84 cage disbursement checks that had been issued to the patrons as Incentive Payments. BRC had issued 92 cage disbursement checks as Incentive Payments during that same period of time. Eight of the cage disbursement checks were retained by the patrons. The allegations concern two sets of violations: those occurring before July 17, 1985, when N.J.S.A. 5:12-101g became effective, and those occurring after that section of the statute was enacted.

N.J.S.A. 5:12-101b establishes that a casino licensee may not "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." Moreover, N.J.S.A. 5:12-101g provides that a "casino licensee may accept a check from a person to enable the person to take part in gaming activity as a player . . . provided that" the check represents a refund of patron's gaming chips in an amount over $25, see, N.J.S.A. 5:12-100k, or a redemption of a patron's front money account, see, N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.24.

N.J.S.A. 5:12-101b provides:

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 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.

"Cash equivalent," as defined in N.J.A.C. 19:45-1.1, means:

1. Certified checks, cashiers checks, treasurers checks, recognized travelers checks or recognized money orders, any of which are made payable to the casino licensee, "bearer" or "cash";
2. Certified checks, cashiers checks, treasurers checks or recognized money orders, any of which are made payable to the presenting patron and endorsed in blank, provided, however, that no such instrument shall be accepted as a cash equivalent if the instrument was originally made payable to any person other than the presenting patron; and
3. Recognized credit cards presented pursuant to N.J.A.C. 19:45-1.25(i).

The checks accepted by BRC pursuant to the Incentive Program procedures technically do not meet the statutory requirements of N.J.S.A. 5:12-101b or N.J.S.A. 5:12-101g or the regulatory requirements of N.J.A.C. 19:45-1.25(b). The checks are not "a recognized traveler's check or other cash equivalent" (N.J.S.A. 5:12-101b), nor do they represent a redemption of a patron's gaming chips in excess of $25 or a refund of a patron's front money deposit. In addition, of the 92 checks issued to the BRC patrons, all but eight were payable to the patron participating in the Incentive Program. The checks not made payable to the patron were payable to either "BRC," "Caesars Atlantic City," "Caesars Boardwalk Regency" or "Boardwalk Regency Corporation." Both N.J.S.A. 5:12-101b(1) and N.J.A.C. 19:45-1.25(c)3 require that all checks sought to be exchanged in a casino shall be "made payable to the casino licensee." Therefore, BRC could not have accepted any of the checks from the patrons unless they were made payable to the licensee and, after July 17, 1985, unless the check satisfied the requirements of N.J.S.A. 5:12-101g.

On July 17, 1985, the Legislature amended the Act to include N.J.S.A. 5:12-101g, which allowed casinos to accept any check issued by a casino which represented a redemption of $25 or more in gaming chips, see, N.J.S.A. 5:12-100k, or a refund of a front money deposit, see, N.J.S.A. 5:12-100b. Prior to July 17, 1985, a check could only be accepted if it satisfied the requirements of N.J.S.A. 5:12-101b, i.e., if it was "a recognized traveler's check or other cash equivalent" or was made payable to the casino licensee, was not post-dated and was presented to a cage cashier in exchange for a credit slip or slips. See, Committee Statement to A-2625, L. 1985, c. 245.

Following the adoption of N.J.S.A. 5:12-101g, the Commission amended N.J.A.C. 19:45-1.1 to specifically define the term "casino check." The Commission's definition of casino check is derived from the language of N.J.S.A. 5:12-101g and provides as follows:

> "Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k) or in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes.

In addition, the Commission promulgated N.J.A.C. 19:45-1.25(f)5 to require casinos to verify with the issuing casino that the check represented either a return of the patron's deposit money or the redemption of the casino's gaming chips prior to acceptance. The regulations promulgated by the Commission clearly support a finding that only checks which meet either of the two requirements of N.J.S.A. 5:12-101g may be accepted by a casino.

For checks issued prior to the enactment of N.J.S.A. 5:12-101g, it is equally clear that only checks which satisfied the requirements of N.J.S.A. 5:12-101b could be accepted by a casino. All but two of the 42 cage disbursement checks which were issued to BRC patrons pursuant to the Incentive Program prior to July 17, 1985, were made payable to the patron. Since the checks were not traveler's checks or cash equivalents and did not meet the other requirements of N.J.S.A. 5:12-101b, it follows that the checks could not be accepted by BRC.

It should be noted that BRC recognized the restrictions on accepting a check issued by a casino when it requested the Commission to "amend N.J.A.C. 19:45-1.1 to include checks issued by Atlantic City hotel/casinos within the definition of "cash equivalent."

See, In the Matter of the Petition of Boardwalk Regency Corporation to amend N.J.A.C. 19:45-1.1 to Include 'Atlantic City Hotel/Casinos' Checks Within the Definition of "Cash Equivalents," Pursuant to N.J.S.A. 5:12-69c, PRN 060204. The Commission considered BRC's petition during the public meeting held on May 25, 1982. On that date, the Commission voted to deny BRC's petition. By Final Order dated November 15, 1982, the Commission memorialized its decision of May 25, 1982.

The significance of the Commission's prior order is that the Commission denied BRC's specific request to expand the definition of cash equivalents, as set forth in N.J.A.C. 19:45-1.1, to include checks issued by Atlantic City casinos. The effect of Commission approval of BRC's request would have been to allow BRC to accept checks issued by other Atlantic City casinos. However, the Commission's denial of BRC's request expressly represented to BRC that it could not accept checks issued by other Atlantic City casinos.

The effect of the Commission's order is further evidenced by Commission staff comments to BRC's internal control submission dated August 31, 1984, and the Commission staff's response thereto, dated August 16, 1985. In its internal control submission to the Commission, BRC included "checks issued by BRC" within its definition of cash equivalents. The Commission staff responded by stating that checks issued by Boardwalk Regency Corporation are not cash equivalents under the current definition in N.J.A.C. 19:45.

BRC's 1982 petition addressed the difficulty associated with a patron who received a casino check in redemption for his gaming chips at one casino and then desired to take that check to another casino. Prior to July 17, 1985, that patron could not submit the first casino's check to another casino. Although the Commission was unwilling to grant the petition, it did recommend that the industry lobby the Legislature for the change. Thereafter, the Legislature enacted N.J.S.A. 5:12-101g.

At no time, either when the petition to the Commission was made or during the lobbying for the bill, was the issue of a casino's acceptance of its own check ever raised. Despite this fact, the Division now attempts to include within section 101g casino checks issued and accepted by the same casino. The language of the statute and the prior Commission Order address "casino licensee checks." They do not differentiate between checks issued by other casinos and those issued by the same casino. The statute is silent regarding the issue.[6]

BRC further contends that its actions did not violate the provisions of section 101b because the payments were not made to enable patrons to engage in gaming activity. "Gaming" is defined in the Act as "[t]he dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game." N.J.S.A. 5:12-22. BRC asserts that since BRC's payment to patrons of incentive monies was made at the culmination of their gaming activity, the acceptance of checks pursuant to the program was not to enable patrons to engage in gaming activity and, therefore, such conduct is not prohibited by the Act. While it is true that the vast majority of the checks were used for redeeming counterchecks, a few were used to establish front money accounts. The establishment of a front money account does enable a patron to engage in gaming activity.

N.J.S.A. 5:12-101b, N.J.S.A. 5:12-101g and N.J.A.C. 19:45-1.1 specifically identify the checks which may be accepted by casinos. The Commission was also quite specific in identifying the checks which could be accepted by casinos when it adopted the definition of "casino checks" and the accompanying regulations. In the absence of any language within the Act or regulations expressly permitting the acceptance of checks which are not "casino checks" but which have been issued by the same casino which wishes to accept the check, BRC could not accept the Incentive Program checks.

During his testimony, Michael Walsh stated that this limited reading of the Act did not make sense from an accountant's perspective. That may be true. Both the Governor's Staff Policy Group Second Interim Report and the SCI Report reflect that the check cashing restrictions were included in the Act and the regulations in order to prevent credit abuses. The SCI recognized that personal checks were "little more than an I.O.U."

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[6] Having been Assistant Counsel to the Governor at the time this bill was passed, and having been responsible for reviewing this legislation, I know that the issue before the Legislature was the acceptance of checks issued by other casinos. The issue of accepting one's own check was never raised.

SCI Report at 6-E. The SCI stated that "these provisions will make the use of personal checks less vulnerable to the same abuses that can occur with casino workers or I.O.Us." SCI Report at 7-E. None of the credit concerns are present in this case. What is safer than a casino accepting its own check, drawn on its own bank, on its own account, with its own money? While the Act does not specifically address a casino accepting its own check, this appears to be an oversight because the issue was never previously raised. As the Act does not specifically provide for such a transaction, there is a technical violation of the Act; however, no harm is done by the transaction. I respectfully suggest that the Commission or the Legislature address this issue so that a casino may accept and cash a check drawn on its own account.

Based upon the foregoing, as a few of the checks were used to establish front money accounts which enabled patrons to engage in gaming activity, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the respondent in voiding or cashing its Incentive Program checks violated N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25.

V. IS THE DIVISION ESTOPPED FROM PURSUING ITS COMPLAINT AGAINST BRC?

BRC asserts that the Division is barred from prosecuting this action because it had knowledge of the Incentive Program as a result of its almost daily audits of BRC's cage functions during the pendency of the program and, by its conduct, tacitly approved the program and its administration. The law is clear that when it is found that one's conduct has led another to do what he would not otherwise have done, then the former is equitably estopped from subjecting the latter to loss as a result of said reliance.

The doctrine of equitable estoppel is a doctrine designed to prevent a party's disapproval of previous conduct if such repudiation would not be responsive to the demands of justice and good conscience. Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334 (1979).

> Estoppel is an equitable doctrine, founded in the fundamental duty of fair dealing imposed by the law, that prohibits a party from repudiating a previously taken position when another party has relied on that position to his detriment. Generally, its elements are a representation (or misrepresentation), knowledge that a second person is acting on the basis of that representation, and substantial detrimental reliance by the second person. See Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334, 339

> (1979). In such circumstances the first person is prohibited from repudiating the truth of his representation.

Atlantic City Housing Authority v. State, 188 N.J. Super. 145, 149 (Ch. Div. 1983), affirmed on other grounds 193 N.J. Super. 176 (App. Div. 1984). See also, Royal Associates v. Concannon, 200 N.J. Super 84 (App. Div. 1985).

Equitable estoppel arises from one's "conduct," which necessarily encompasses spoken or written words, positive acts and silence or an omission to act. State v. United States Steel Corp., 22 N.J. 341, 358 (1956). Estoppel is not based upon subjective intent but rather on the objective impression created by the actor's conduct. Miller v. Teachers' Pension & Annuity Fund, 179 N.J. Super. 473, 477 (App. Div. 1981) certif. den. 88 N.J. 502 (1981).

Equitable estoppel has also been defined by the New Jersey courts as "conduct, express or implied, which reasonably misleads another to his prejudice so that repudiation of such would be unjust in the eyes of the law." Marley v. Borough of Palmyra, 193 N.J. Super. 271, 299 (Law Div. 1983). The objective impression created by such conduct is the linchpin of estoppel. Ibid.

The essential elements for the doctrine of equitable estoppel are set forth in detail in Clark v. Judge, 84 N.J. Super. 35 (Ch. Div. 1964), aff'd o.b. 44 N.J. 550 (1965) as follows:

> (1) Conduct amounting to a representation or a concealment of material facts.
> (2) Facts known to the party allegedly estopped, or at least the circumstances must be such that knowledge of them can be necessarily imputed to him.
> (3) The truth concerning the facts must be unknown to the party claiming the estoppel at the time when acted upon by him.
> (4) The conduct must be done with the intention that it be acted upon by the other party.
> (5) The conduct must be relied upon by the other party, and he must be led to act upon it.
> (6) He must in fact act upon it in such a manner as to change his position for the worse.

84 N.J. Super. at 54.

The vital principle of equitable estoppel is that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. In Re Gravure Paper & Board Corp., 234 F. 2d 928, 932 (3d Cir. 1956).

The doctrine of equitable estoppel is not applied as readily against the State as against private parties. See, Burns v. Bd. of Trust. of Pub. Emp. Retirement System, 2 N.J.A.R. 427 (June 29, 1979). However, this general principle is tempered where there has been substantial reliance by those whose interests are affected. See, Skulski v. Nolan, 68 N.J. 179 (1975). These cases both suggest that the doctrine of equitable estoppel can be utilized against a public entity under some circumstances. However, BRC recently raised the defense of equitable estoppel in an appeal of a Commission ruling in In the Matter of the Petition of Adamar of New Jersey, Inc., Requesting a Declaratory Ruling Concerning the Off-Site Acceptance of Payments On Non-Returned Counter Checks, Etc., 222 N.J. Super. 464 (App. Div. 1988). In rejecting the appellant's defense, the court noted that "[c]ourts rarely invoke equitable estoppel against a governmental entity, particularly where estoppel interferes with essential governmental functions." 222 N.J. Super. at 475, citing Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954) and O'Malley v. Department of Energy and Department of Civil Service, 109 N.J. 309, 316 (1987).

In Adamar, the appellant sought to prevent the Commission from reopening and vacating prior-approved procedures of the licensee/appellant. The approvals concerned the "passive" collection of outstanding counterchecks at identified branch office locations. "Passive collection" was recognized by the court as "a procedure whereby a licensed casino employee is sent at the patron's request to a location other than the cashiers' cage for receipt of payment of a patron's gaming checks." 222 N.J. Super. at 468. The appellants submitted internal control procedures for branch office collections. The procedures were granted approvals by Commission staff through delegated authority which were "ratified by the Commission, on a case-by-case basis from 1983 to 1985." Ibid.

Thereafter, Adamar of New Jersey, Inc., sought approval for expanded "field" collection procedures. The Division objected and Adamar petitioned the Commission for approval of the submitted procedures. The Commission denied Adamar's request and also

reopened and vacated the prior-ratified approvals "to protect the public interest and integrity of the casino industry." 222 N.J. Super. at 469. As noted, the appellate court affirmed the Commission's decision.

In the present matter, BRC contends that the Division's knowledge of the Incentive Program serves to estop the Division from bringing the instant action. The facts relied upon by BRC to assert its defenses are that the Division had knowledge of the Incentive Program since early in its inception and did not proceed with any enforcement action until February 1987. The Division does not dispute that it knew in 1983 that BRC intended to offer payments to selected patrons who brought cash to the casino for gambling. The parties have stipulated to that fact. Also entered into the record are joint exhibits which indicate that a Division agent reviewed Incentive Program procedures and documents in October or November 1985. The Division thereafter conducted an extensive investigation of the Incentive Program in 1986 which resulted in the filing of the Division's first complaint on February 19, 1987. In addition, BRC asserts that the Division had knowledge of the Incentive Program through its conduct of almost daily audits of BRC for over four years. BRC asserts that it reasonably believed that its conduct fell within the letter and the spirit of the Casino Control Act since the Division had knowledge of the Program and yet never questioned the operation of the Program.

While recognizing that the doctrine of estoppel is not applied to a government agency exercising a governmental function to the same extent as it is against an individual or private corporation, particularly when the government agency is acting to protect the health, safety and welfare of the public, BRC asserts that in this case the applicable statutes have no such public safety motivation, but rather are aimed merely at establishing accurate bookkeeping practices and procedural integrity. BRC concludes that "since no public policy issues are implicated in the instant litigation, and since the conduct of which BRC is now accused does not vitiate any of the goals of the Casino Control Act, the doctrine of estoppel should apply."

It is apparent that the Division conducted several interviews and collected various documents in April 1983 regarding the Incentive Program at BRC. The interviews conducted by the Division disclosed that BRC provided payments to patrons who brought cash to the casino for the purpose of gambling. In addition, the documentation obtained by the Division indicated that the plan was designed to encourage foreign customers to bring cash to the casino to offset losses suffered by BRC in dealings with foreign credit

customers through inadequate foreign exchange rates, loss of interest due to statutory and regulatory depository requirements and the inability to collect on counterchecks issued to foreign customers. Included within the documentation were analyses prepared by BRC personnel to illustrate the "cost" to BRC of dealing with foreign credit customers, with the major portion of the cost being unearned interest to BRC as it awaited the deposit and payment of counterchecks issued to foreign patrons.

In the third phase of the Incentive Program, the Program was conducted and based upon the amount of a patron's gambling losses. The program was not based upon the amount of cash that a patron deposited with BRC to engage in gaming activity. Thus, it is inaccurate to make the broad statement that "an investigation was initiated to ascertain the specifics of the [Incentive] program and determine its legality." The "specifics" of BRC's Incentive Program have been changed at least twice by BRC. Since the Incentive Program as it existed in 1985 through 1987 was significantly different from that which was offered by BRC in April 1983, BRC cannot rely on the Division's limited awareness of the Program in 1983 as tacit approval for its subsequent programs.

Secondly, in its Statement of Facts BRC states that "the Division has conducted routine cage audits at BRC's Atlantic City casino on an almost daily basis." Although BRC does not qualify or place in any context the phrase "routine cage audits," it is clear that BRC intends to imply that the presence of Division agents within the BRC casino cage in the course of specific job assignments establishes actual knowledge of their part of each and every transaction that is occurring in the cage, or has occurred, over some particular period of time. That factual premise is inaccurate. BRC also implies that the Division's knowledge of its Incentive Program and failure to take action against BRC somehow resulted in the tacit approval of the Program. This interpretation mis-states the function of the Commission and the Division.

The Governor's Staff Policy Group recommended that:

> the quasi-legislative and quasi-judicial functions associated with the administrative gaming control process be stationed in an independent body created specially for such purposes. The enforcement responsibility, that is, the investigative and advocacy functions, should be placed under the direct authority of the Attorney General and be exercised through a Division dedicated to these responsibilities. In placing the enforcement authority in the Attorney General, this group is mindful of the resources of the Department of Law and Public Safety, and the necessity for coordinated use of

> those resources. Equally important, the proposed enforcement structure would alleviate the difficulties experienced by interagency law enforcement in terms of information sharing and resource conservation. In the policy group's view, a coordinated enforcement effort will be the foundation of a well-ordered regulatory scheme. Without a unified structure under the Attorney General, under whose jurisdiction all law enforcement agencies fall, the availability of intelligence information, particularly important to the licensing function, may be curtailed. The enforcement function should not be separated from the existing law enforcement community.

Second Interim Report at 50-51. The Group therefore recommended the creation of the Casino Control Commission, whose functions would be quasi-legislative and quasi-judicial, and the creation of the Division of Gaming Enforcement, which would be affirmatively charged with the responsibilities of conducting all background and other investigations, presenting the results of such activities to the Commission, and, when appropriate, advocating denial or disqualification of an application or prosecuting violations of the Act and of Commission regulations. The Policy Group concluded that:

> The balance struck between the authority of the Commission and the enforcement responsibility of the Attorney General is constructive. The advocacy role envisioned for the Division of Gaming Enforcement should better assure that the social policies and legislative goals are implemented by providing a check on the authority of the Commission. At the same time, the independent nature of the Commission should ensure that there is an objective review of all matters involving casino gambling according to the standards created by the legislature.

Second Interim Report at 52.

Similarly the SCI also recommended that the regulatory power be divided between two bodies of agencies, one having the decision-making authority and one having the enforcement responsibility. SCI Report at 6A. The SCI recommended that the responsibilities of the two agencies be as follows:

> Decision Making Body
>
> 1. holds license application hearings and decides whether to grant or deny same;
>
> 2. conducts disciplinary hearings upon complaint from the enforcement body, and imposes sanctions, such as fines, suspensions, or revocations of licenses, when appropriate;
>
> 3. promulgates rules and regulations upon its own motion or upon application from the enforcement body or the industry.

Enforcement Body

1. investigates all license applicants;

2. appears before the decision-making body and recommends approval, disapproval or otherwise advises decision-making body with respect to all license applicants;

3. monitors and surveils all casino operations;

4. investigates possible violations of casino gaming laws, regulations or rules;

5. files and [prosecutes] complaints before decision-making body when violations found;

6. appears before decision-making body to recommend, oppose, or otherwise advise on promulgation of rules and regulations;

7. takes or defends appeals from licensing, disciplinary, and rule-making decisions of decision making body.

The primary reason that prompted the S.C.I.'s recommendation of a State regulatory power divided in this fashion is a basic concept of fair play. Historically, our system of laws has been based upon a separation of the investigatory-prosecutorial function from the adjudicative function. To place the power both to investigate possible violations of the casino gaming laws and the power to impose sanctions for such violations would violate this concept.

Other factors militate against a single body and in favor of a two-tier system. One is the need for proper checks and balances. To be effective, the S.C.I.'s insistence on a strong and independent regulatory authority must apply to both bodies in the two-tier system.

And as also noted, this recommendation is predicated upon the presence of external checks on the regulatory authorities to prevent independence from leading to abuses of power. A two-tier system would itself provide some external checks (though not all, as will be discussed later). Each body will tend to serve as a check on the other.

The decision-making body will clearly do so, since it will have to review the recommendations of the enforcement body before reaching its own decision on whether to issue or deny a license, whether a violation has occurred and if so, whether and what sanctions to impose, etc.

. . . .

Another reason to separate the regulatory power into two bodies is to increase the ability of each body to perform more fully its own functions.

If the enforcement body will not have the authority to make the ultimate decisions on licensing or disciplinary matters, then it can assume an adversarial role and to appear before the decision-making body as an advocate.

> By the same token, the decision-making body—freed from investigative and enforcement functions—can make its decisions on an impartial basis without favoring one side or another.
>
> Closely related to this is the basis upon which those decisions will be made. While the enforcement body would be free to gather all information that may come to its attention with respect to a license applicant or licensee, a license application or disciplinary action would only be decided on matters presented to the decision-making body in open hearing (emphasis added).

SCI Report at 6A - 9A.

The SCI also recommended, as did the Governor's Staff Policy Group, that the enforcement agency be located as a division in the Department of Law and Public Safety. The SCI specifically recommended that the enforcement body should be specifically provided with its own audit capability and audit function. Based upon its own experience, the SCI believed that "in order to effectively monitor the possible infiltration of organized crime into casinos and casino-related activities, the casino law enforcement arm must be able to trace the sources of money being used by licensees and others who operate ancillary services." SCI Report at 22A. These recommendations of the Governor's Staff Policy Group and the SCI were adopted by the Legislature and were enacted in the Casino Control Act. The Division's function is investigative and prosecutorial. The Commission is charged with the quasi-legislative and quasi-judicial functions. Knowledge by the Division of any program by any casino cannot be relied upon as tacit approval of a program. Only the Commission may approve a program and BRC never presented their Incentive Program to the Commission for approval.

The Division is not empowered to approve or reject any programs or procedures contemplated or conducted by casino licensees. That authority is vested entirely with the Commission. Furthermore, N.J.S.A. 5:12-99 places a mandatory responsibility on a casino licensee to submit internal control procedures to the Commission and to refrain from implementing, or changing, those procedures until they are approved by the Commission. Section 99 of the Act does not provide nor infer any concept of effective approval by the Division as an alternative or substitute for Commission approval. The Division's role in the internal control process is expressly limited by the terms of N.J.A.C. 19:45-1.3(b) to reviewing prospective programs and procedures that are actually submitted by a casino licensee and to provide advice to the Commission as to whether the proposed procedures conform to the Act and regulations and entail adequate and effective controls.

The record in this case reveals only the Division's knowledge of the Incentive Program and nothing more. There is nothing in the record to indicate that any Division representative ever made any representation to BRC that the Incentive Program was legal. For that reason alone the equitable defenses cannot be given any weight. In addition, there has been no showing of any misrepresentation by the Division. Moreover, the showing of mere knowledge, with nothing more, is insufficient to invoke the equitable defense of estoppel, particularly where the estoppel will interfere with essential governmental functions. 222 N.J. Super. at 475.

The purpose of the Casino Control Act is to protect the health, safety and welfare of the public. The whole concept of strict regulation goes directly to achieving this purpose. The concerns of the legislature, the Governor's Policy Group, and the S.C.I. relate directly to protecting the public. The concerns regarding casino credit are directly related to this case when BRC refunds a percentage of a patron's gambling losses which refund is then used to establish a front money account to enable the patron to further gamble. The accounting procedures and controls established and the requirement that they be reviewed and approved by the Commission are not merely ministerial, but also serve a purpose to protect the public by insuring the integrity of the gaming industry. Under such circumstances, the doctrine of equitable estoppel is inapplicable against a State agency.

VI. DO FUNDAMENTAL FAIRNESS AND DUE PROCESS REQUIRE THAT THE COMPLAINT AGAINST BRC BE DISMISSED DUE TO THE DIVISION'S FAILURE TO CHALLENGE THE INCENTIVE PROGRAM IN A TIMELY MANNER?

It is well settled that the twin principles of due process and fundamental fairness are applicable to administrative proceedings. In re Kallen, 92 N.J. 14, 26 (1983). A central element of the concept of fundamental fairness is the requirement that agencies promptly resolve matters brought before them. In re Arndt, 67 N.J. 432, 436-37 (1975); accord In re Kallen, 92 N.J. 14, 26 (1983). A central element of the concept of fundamental fairness is the requirement that acgencies promptly resolve matters brough before them. In re Arndt, 67 N.J. 432, 436-37 (1975); accord In re Kallen, 92 N.J. at 26.

Recognizing that the prompt resolution of administrative disputes is essential to the concept of fundamental fairness section 76(a) of the Casino Control Act provides:

> The Division of Gaming Enforcement shall promptly and in reasonable order investigate all applcations, enforce the provisions of this act and any regulations promulgated hereunder, and prosecute before the Commission all proceedings for violations of this act or regulations promulgated hereunder.

BRC argues that the Division's Complaint must be dismissed because "the Division's conduct in prosecuting the instant complaint, after four years of silent acceptance, is violative of due process and fundamental fairness." The Division counters that BRC has failed to show anything fundamentally unfair or violative of due process in the filing of the instant enforcement action by the Division.

Delays far shorter than that occasioned in this case have been found so violative of due process and fundamental fairness as to demand dismissal of the complaint. The case of State v. One (1) Ford Van, Econoline, 154 N.J. Super. 326 (App. Div. 1977), certif. den., 77 N.J. 474 (1978) is illustrative of this concept. Examining the prompt action requirement of N.J.S.A. 24:21-35c(4), the old forfeiture statute, the Appellate Division held that the State's fourteen-month delay in instituting forfeiture proceedings, without explanation, violated the vehcile owner's right to due process of law. Id. at 336. The complaint was therefore dismissed. Id. at 338. The court noted, however, that where the delay is unjustified, as it was in that case, "forfeiture proceedings are defeated on the reasoning that the deprivation of property during the intervening period constitutes a denial of due process." Id. at 336 (citations omitted). BRC has not been deprived of any property right in the instant matter and it is being afforded a full opportunity to defend itself on the merits of the Division's claims prior to the imposition of any sanctions.

In Arndt, the New Jersey Supreme Court ruled that the Division of Motor Vehicles' failure to institute license suspension proceedings within a reasonable time following the defendant's arrest for drunk driving warranted vacatur of the lower court's order of suspension. Quoting the United States Supreme Court in Smith v. Illinois Bell Telephone Company, 270 U.S. 587 (1926), the Court opined that:

> The delays between filing of the arresting officer's report and activation of the suspension proceedings and between the hearing thereon and decision in this case . . . ."evince[d] an entire lack of that acute appreciation of justice which should characterize a tribunal charged with [such a] delicate and important duty. . ." [67 N.J. at 436, 437]

In Arndt the Court vacated an order of suspension of a driver's license on the grounds that a delay of 20 months between a driver's refusal to take a breathalyzer test and notification to him of the proposed suspension of his license violated the principles of fundamental fairness. 67 N.J. at 436-437. However, In re Arndt is distinguishable from the present situation because the applicable motor vehicle statute, N.J.S.A. 39:4-50.4, required the Director of the Division of Motor Vehicles to suspend the driver's license upon receipt of the arresting officer's sworn report, unless the driver requested a hearing. In the instant matter, N.J.S.A. 5:12-76 does not impose the same statutory requirement imposed in In re Arndt. Nor does section 76 of the Act establish any statute of limitations on actions brought by the Division in enforcement actions.

Moreover, as the Court also noted in In re Kallen, 92 N.J. 14, 27 (1983), "there are no simple answers as to what constitutes fundamental fairness in administrative hearings. Each case must be considered and evaluated on its own merits." In Kallen, the Court noted that the Appellate Division has held in In re Garber, 141 N.J. Super. 87, certif. den. 71 N.J. 94 (1976), that a delay of 12 months in suspending a driver's license did not violate the principles of fundamental procedural fairness. 92 N.J. at 27. The Court quoted directly from the Appellate Court's decision:

> Delay will not generally affect the validity of an administrative determination, particularly where no prejudice is shown. [141 N.J. Super. at 91] Id.

Thus, it is clear from a reading of the above cases that a party asserting a violation of the principle of fundamental fairness must do more than assert that the State's action amounted to an unreasonable delay. The respondent must also show that it was prejudiced by the delay.

In this case, BRC has shown no prejudice. There has been no deprivation of any rights or privileges suffered by BRC. Therefore, absent any showing of prejudice, BRC's claims that the Division's initiation of the instant action violates fundamental fairness must be rejected.

VII. DOES BRC'S INCENTIVE AGREEMENT VIOLATE THE PROVISIONS OF N.J.S.A. 5:12-100e and N.J.S.A. 5:12-70o?

While not specifically raised in its complaint, when the Division discussed the alleged violation of N.J.S.A. 5:12-104a(1) (see section III above), the Division raised the issue of whether or not the Incentive Agreement has the effect of changing the gaming odds, and if so, whether the Agreement therefore is violative of N.J.S.A. 5:12-100e and N.J.S.A. 5:12-70o.

When BRC entered into an Incentive Agreement with a preferred patron, it was clear that the purpose was to obtain the patronage of persons who might not otherwise gamble at BRC. In order to entice these patrons to gamble at its casino, BRC paid to those patrons an amount that was calculated upon a stated percentage of the patrons' gaming losses. By agreeing to pay the patron, BRC provided the participating patron with an advantage over the odds of the casino games that was not shared by other patrons. For example, a patron who is to receive a payment of 10 percent of his losses pursuant to the Incentive Program was increased his odds at beating the house since he knows that it will cost him only $.90 for every $1.00 wagered to win. As the New Jersey Supreme Court stated in Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 168-169 (1982), the Commission has exclusive authority, pursuant to N.J.S.A. 5:12-100e and N.J.S.A. 5:12-70o, to establish the rules and regulations of all casino games including the pay-offs and odds. One of the basic tenets of the Act is that there is one set of rules for all patrons at the table games. It has been left to the Commission to promulgate the rules of the games, which it has done in N.J.A.C. 19:47-1.1 et seq.

In the present matter, BRC has given the participating patrons the ability to modify the setting of odds at the casino games. If the Incentive Program is not offered, the patrons may not patronize BRC. Therefore, it is clear that the patrons' status as high rollers has resulted in BRC's providing a mechanism by which the patrons gain a clear advantage over other patrons against the house.

If the Commisison elects to address this issue, based upon the foregoing, I **CONCLUDE** that the Division has established by a preponderance of the credible evidence, that the respondent's Incentive Program violates the provisions of N.J.S.A. 5:12-100e and N.J.S.A. 5:12-70o.

VIII. CASH COMPLIMENTARIES

Another issue not raised in the Division's complaint, but which I raised at several points in the hearing, is whether or not the Incentive Payments are cash complimentaries, and if so, are cash complimentaries authorized under the Casino Control Act. Both parties indicated that they did not believe the Incentive Payments were cash complimentaries (BRC called it a marketing plan), but I must question those representations. Something just doesn't seem fair about one patron gambling, incurring gambling losses, and then receiving a certain percentage of his losses back from the casino. I dare say, most casino patrons do not receive any of their losses back from the casino in the form of a reimbursement for playing. It is possible that an Incentive Agreement player could be sitting at the same table, playing the same game, with several non-incentive agreement or regular players. Is this system fair to the regular players who are sitting at the same table, playing the same game, and who lose? They do not get any of their losses back. As indicated above in section VII, it appears that the odds are therefore changed in favor of the Incentive Agreement players. What else is this Incentive Payment if it is not a form of cash complimentary? A player is getting cash back from the casino after gambling for a certain minimum period of time, placing a certain amount of money at risk, and incurring a certain level of losses. As stated by William Shakespeare, "What's in a name? That which we call a rose By any other name would smell as sweet." Romeo and Juliet, Act II, Sc 1, line 43. I find it hard to believe that if one described the Incentive Program to the ordinary person or casino patron on the street that the person would call the Incentive Payment anything other than a cash complimentary.

The question then arises, if the incentive payment is a cash complimentary, are cash complimentaries authorized under the Casino Control Act. For many years I have been informed that it was the position of both the Commission and the Division that cash complimentaries are not authorized under the Casino Control Act. However, there is no case law interpreting N.J.S.A. 5:12-14(a) which is the statute which defines complimentary services, nor has there been any direct interpretation of N.J.A.C. 19:45-1.9, which is the Administrative Code provision that defines complimentary services.

It is clearly permissible for a casino licensee to pay cash to its patrons under a variety of limited circumstances. However, such cash payments may be made to casino patrons only in situtations representing the reimbursement for legitimate expenses

actually incurred or to be incurred by the patron, and pursuant to bus and other coupon distribution programs, which are regulated by N.J.A.C. 19:45-1.46.

With respect to the reimbursement of patrons' expenses, casinos may presently pay cash to a patron for the purpose of reimbursing that patron for legitimate and actual expenses, such as travel. The casino licensee's responsibilitiy in such a situation is to confirm that the expenses were actually incurred or will be incurred by the patron by obtaining supporting documentation evidencing the cost of the expense, such as a receipt, from the patron. See, N.J.A.C. 19:45-1.2(c)3.

Cage disbursements of cash are also permitted in the area of bus and other coupon distribution programs, which are strictly regulated by N.J.A.C. 19:45-1.46. Typically, these promotional programs involve the disbursement of large numbers of coupons. The coupons may be exchanged for a roll of coins, usually in the range of $5 to $10, at the cage within the casino which has sponsored the promotion.

As set forth more fully below, the Act and Commission regulations permit casino licensees to pay "cash complimentaries" only within the above-described limits. It has never been the position of the Division nor has it ever been the Commission's interpretation of the Act and the regulations to allow unrestricted disbursements of cash.

The incentive payments were not made for the purpose of reimbursing any of the Incentive Agreement patrons for any expenses incurred by them. Rather, the incentive payments were made for the purpose of reimbursing Incentive Agreement patrons for amounts they lost during their gaming activity. The plain language of the Casino Control Act and the regulations do not allow for the unrestricted disbursement of cash to casino patrons.

N.J.S.A. 5:12-14a defines a "complimentary service or item" as follows:

> "Complimentary service or item" - A service or item provided at not cost or at a reduced price. The furnishing of a complimentary service or item by a casino licensee shall be deemed to constitute the indirect payment for the service or item by the casino licensee, and shall be valued in an amont based upon the retail price normally charged by the casino licensee for the service or item. The value of a complimentary service or item not normally offered for sale by a casino licensee or provided by a third party on behalf of the casino licensee of providing the service or item, as determined in accordance with the rules of the commission.

This statute was enacted in 1983 as L. 1983, c. 41, after the passage of Assembly Bill No. 1945 (A-1945).

The regulatory counterpart to the statutory definition cited above is found in N.J.A.C. 19:45-1.9(a), which also defines complimentary services or items as "a service or item provided directly or indirectly by a licensee at no cost or at a reduced price." This definition of complimentary service became effective in January 1983 on the same date that A-1945 was signed into law. The previous version of N.J.A.C. 19:45-1.9 read as follows:

> Complimentary service shall be defined as the sale value of rooms, food, beverage, travel, and other services provided without charge or the cost of services paid to a third part.

The Casino Control Commission set out its reasoning for the charge in the New Jersey Register: "Finally, amendments to N.J.A.C. 19:45-1.1 and 1.9 are being proposed which will clarify the means by which complimentary services or items provided by casino licensees are to be valued (emphasis added); 15 N.J.R. 257 at 258. Thus, the facilitation of valuation, and not a desire to expand the scope of complimentary services, was the rationale underlying the Commission's actions.

In addition to defining complimentary services or items, N.J.A.C. 19:45-1.9 also establishes the regulatory requirements for the recording and reporting of complimentary services or items. Specifically, subsections (b) and (c) provide as follows:

> (b) All complimentay services or items shall be recorded as follows:
>
> 1 A complimentary service or item provided directly to patrons in the normal course of a licensee's business shall be recorded at an amount based upon the full retail price normally charged for such service or item by the licensee;
>
> 2 A complimentary service or item not offered for sale to patrons in the normal course of a licensee's business but provided directly by the licensee shall be recorded at an amount based upon the actual cost to the licensee of providing such service or item;
>
> 3 A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by a third party not affiliated with the licensee shall be recorded at an amount based upon the actual cost to the licensee of having the third party provide such service or item;

4 A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by a third party who is affiliated with the licensee shall be recorded by the licensee in accordance with the provisions of this seciton as if the affiliated third party were the licensee.

(c) The licensee shall accumulate both the dollar amount of and number of persons provided with each category of complimentary services.

1 A quarterly report shall be filed with the Commission regarding the complimentary services provided.

2 The complimentary services shall, at a minimum, be separated into categories for rooms, food, beverage, travel and other services.

The correct starting point in addressing the issue of the permissibility and scope of cash complimentaries is found in the language of N.J.S.A. 5:12-14a and N.J.A.C. 19:45-1.9. The plain language of both of these sections clearly indicates that unrestricted disbursements of cash to casino patrons is not permitted.

By definition, a complimentary service or item under N.J.S.A. 5:12-14a and N.J.A.C. 19:45-1.9 is a service or item provided at no cost or at a reduced price. The statutory definition further states that the furnishing of a complimentary service or item by the casino licensee "shall be valued at an amount based upon the retail price normally charged. . ." (emphasis added). For services or items provided by a third party on behalf of the casino licensee, the statute provides that "[t]he value . . . shall be the cost to the casino licensee of providing the service or item . . ." (emphasis added). The statute clearly refers to services or items that are provided by a licensee directly or by a third party on behalf of the licensee the cost of which is passed on to the licensee.

This concept is continued in the sections of N.J.A.C. 19:45-1.9 which establish the recording and reporting requirements for complimentary services and items. Subsection (b)1 of N.J.A.C. 19:45-1.9 requires recording the complimentary service or item "at an amount based upon the full retail price normally charged for such service of item . . ." (emphasis added). Similarly, subsection (b)2 and 3 require recording the service or item "at an amount based upon the actual cost to the licensee," whether the service or item is provided directly by the licensee or by a third party on behalf of the licensee. The above-quoted sections of the Act and Commission regulations clearly indicate that the services or items that may be provided to casino patrons are those services or items that are purchased from a third party or which can be directly provided by a casino licensee. The unrestricted disbursements of cash from casino cage funds do not fall within the realm of

services or items that are provided by licensees either in the course of its business or otherwise. Nor is cash a "service or item" that may be purchased from a third party for the purpose of providing it to a casino patron.

The inclusion of the provision "and other services and items of value" was one of the changes brought about by the 1983 amendments set forth in A-1945. No court has yet interpreted the scope of the term at this point. Thus, it is necessary to utilize rules of statutory construction so as to interpret the statue in a fashion consistent with the intention of its drafters.

N.J.S.A. 1:1-1 provides the following rule of construction for New Jersey statutes.

> In the construction of the laws and statutes of this state, both civil and criminal, words and phrases, shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language. Technical words and phrases, and words and phrases having a special or accepted meaning in the law, shall be construed in accordance with such technical or special and accepted meaning.

It is also well established in our case law that "statutory language should be given its ordinary meaning absent specific intent to the contrary." Mortimer v. Board of Review, 99 N.J. 393, 398, (1985) citing Levin v. Township of Parsippany - Troy Hills, 82 N.J. 174, 182 (1980); Abbotts Dairies v. Armstrong, 14 N.J. 319, 325 (1954). In the present case, the application of this rule of statutory construction does not allow for the payment of unlimited cash complimentaries. By defining complimentary services or items in terms of their retail value or cost the legislature and the Commission have expressly limited complimentaries to services or items to which a "cost" attaches. These include services or items that are provided in the course of a casino licensee's business or within the line of busiess of a third party provider of the service or item.

It is also instructive to examine N.J.A.C. 19:45-1.9(c)2 in determining the permissible scope of complimentaries. This subsection provides as follows: "(t)he complimentary service shall, at a minimum, be separated into categories for rooms, food, beverage, travel and other services."

The above-enumerated list sets forth the services that a casino licensee may provide to casino patrons. For services which are not covered by the major categories of rooms,

food, beverage or travel, the Commission has provided the category of "other services." Further, this catchall category is intended to provide a description for those infrequent instances where the service provided does not fit squarely within the other defined areas. This catchall category was not intended and should not be interpreted to allow the unrestricted disbursement of cash.

Another principle of statutory construction which is helpful in the instant matter is the legal maxim expressio units est exclusio alterius. That principle stands for the proposition that where express mention is made of one thing, the exclusion of others is implied. Shapiro v. Essex County Freeholder Board, 177 N.J. Super. 87 (Law Div. 1980); aff'd, 183 N.J. Super. 24 (App. Div. 1982); aff'd, 91 N.J. 430 (1982). Although courts are cautioned that this maxim is only an aid in construction and not a rule of law, see e.g., Allstate Insurance Company v. Malex, 104 N.J. 1 (1986), this principle is appropriate in the instant case. Here, the Commission has duly promulgated regulations, which list the forms of complimentary services permitted to be provided by casino licensees to its patrons. The Commission did not include "cash" or "currency" within that listing. If the Commission had intended to allow the unrestricted disbursement of cash to casino patrons it would have included "cash" within the listing in N.J.A.C. 19:45-1.9(c)2. The absence of any mention of the word "cash" within the pertinent sections of the Act and the regulations clearly indicates that cash may not be given by casino licensees without restriction.

In addition, the entire statutory and regulatory scheme surrounding the issuance of complimentaries is designed to prevent certain types of abuses and violations from occurring. Specifically, N.J.A.C. 19:45-1.2(c)3 requires a casino licensee to maintain "detailed supporting and subsidiary records" to ensure that the complimentary service being provided to the patron is permissible. This much has been recognized in prior decisions by the Commission and the OAL.

In State of New Jersey v. Greate Bay Hotel and Casino, Inc. et al (CCC Dkt. No. 83-17), OAL Dkt. No. CCC 5460-83, decided March 26, 1984, the Division charged Greate Bay with, inter alia, violations of N.J.A.C. 19:45-1.2(c)3 in failng to maintain proper supporting documentation in the issuance of a $325,000 check in payment for a group's airfare. The only documentation maintained by the casino licensee was a document prepared by Greate Bay's Director of Casino Marketing in which he computed the airfare figure based on his own estimates. There were no tickets available. The Director of

Marketing estimated the first-class, round-trip airfare from Hong Kong to New York to be $4,000. He multiplied this figure by the number of people traveling in the group, which was 67, for a total amount of $268,000. The balance of $57,000 was attributed to "other players' guests and children."

Administrative Law Judge Jeff Masin, in his Initial Decision, dated March 26, 1984, wrote the following:

> The above document obviously is not a satisfactory supporting and subsidiary, detailed and accurate record concerning the complimentary services provided. Greate Bay does not contend that it is so. It admits that it failed to keep the proper records. In mitigation it indicates that it reported the complimentary travel expenditure in its monthly report of payables. As noted by the petitioner, this report hardly serves the function that is served by the daily report to the Division which enables the Division to keep tabs on who is receiving complimentary services, for what, when, in what amount and other significant facts which may play a role in the Division's overall supervisory and law enforcement posture vis-a-vis the casinos. In addition, merely listing the complimentary service as a payable on a payables report does not even highlight the expenditure to those watching the provision of complimentary services, but serves to place the expenditure in and amongst many transactions which are either less significant or of a different character than the provision of free services to casino patrons. Greate Bay's submission of the expenditure in the payables report is hardly a mitigating factor in respect to the concerns identified by this regulation, although it is clear that Greate Bay did not attempt to hide the transaction. [at 16]

Similarly, the Commission in its July 25, 1984 opinion, had the following comments with regard to Greate Bay's failure to maintain adequate documentation:

> The failure to keep accurate accounting records on complimentary services strikes at the heart of all accounting controls. The ability of the DGE to monitor complimentary practices and the Commission to audit significant expenditures is largely dependent upon completeness and accuracy of the accounting records. What records were kept concerning the $325,000 reimbursement at issue here were grossly inadequate. [at 19]

While the above discussion addresses the issue as to whether or not cash complimentaries were permissible prior to January 14, 1988, it is explicitly clear that since January 14, 1988, unrestricted cash complimentaries are prohibited under the Casino Control Act. On that date P.L. 1987, c. 426, took effect. In that bill, the Legislature amended N.J.S.A. 5:12-102m to specifically clarify that unrestricted cash complimentaries were prohibited. That section now provides:

> m. No casino licensee shall offer or provide any complimentary services, gifts, cash or other items of value to any person unless:

(1) The complimentary consists of room, food, beverage or entertainment expenses provided directly to the patron and his guests by the licensee or indirectly to the patron and his guests on behalf of a licensee by a third party; or

(2) The complimentary consists of documented transportation expenses provided directly to the patron and his guests by the licensee or indirectly to the patron and his guests on behalf of a licensee by a third party, provided that the licensee complies with regulations promulgated by the commission to ensure that a patron's and his guests' documented transportation expenses are paid for or reimbursed only once; or

(3) The complimentary consists of coins, tokens, cash or other complimentary items or services provided through a bus coupon or other complimentary distribution program approved by the commission or maintained pursuant to commission regulation; or

(4) The complimentary consists of noncash gifts, provided that such noncash gifts in excess of $2,000.00 per trip or such greater amount as the commission may establish by regulation provided directly to the patron and his guests by the licensee or indirectly to the patron and his guests on behalf of a licensee by a third party shall be supported by documentation regarding the reason the noncash gift was provided to the patron and his guests, including where applicable, a patron's player rating, to be maintained by the casino licensee. For the purposes of this paragraph, all noncash gifts presented to a patron and the patron's guests within any five-day period shall be considered a single noncash gift.

Each casino licensee shall maintain a regulated complimentary service account, for those complimentaries which are permitted pursuant to this section, and shall submit a quarterly report to the commission based upon such account and covering all complimentary services offered or engaged in by the licensee during the immediately preceding quarter. Such reports shall include identification of the regulated complimentary services and their respective costs, the number of persons by category of service who received the same, and such other information as the commission may require. [emphasis added]

If the Incentive Payments are cash complimentaries, then they are prohibited under present law.

I **FIND** that the Incentive Payments were cash complimentaries, and I **CONCLUDE** that unrestricted cash complimentaries such as the Incentive Payments in this case are prohibited under the provisions of the Casino Control Act, N.J.S.A. 5:12-14a, N.J.S.A. 5:12-102m, and N.J.A.C. 19:45-1.9.

PENALTY DISCUSSION

N.J.S.A. 5:12-129 authorizes the Commission to impose a variety of sanctions for violations of the Act or the regulations promulgated thereunder. Specifically, N.J.S.A. 5:12-129(5) empowers the Commission to "[a]ssess such civil penalties as may be

necessary to punish misconduct and to deter future violations." Likewise, several other subsections of the above-cited statutory provision allow the Commission to revoke or suspend the license or registration of any person for violations of the Act or the regulations. Similarly, the Commission can, pursuant to N.J.S.A. 5:12-129, order restitution of any monies or property unlawfully obtained, enter a cease and desist order or issue letters of reprimand or censure.

With regard to the imposition of the appropriate penalty, N.J.S.A. 5:12-130 sets forth the factors to be considered by the Commission when considering sanctions for a violation of the Act or Commission regulations. That provision states:

> In considering appropriate sanctions in a particular case, the Commission shall consider:
>
> a. The risk to the public and to the integrity of gaming operations created by the licensee or registrant;
>
> b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or the regulations promulgated hereunder;
>
> c. Any justification or excuse for such conduct by the licensee or registrant;
>
> d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
>
> g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the Commission, and not to a finding of a violation itself.

During the course of the proceedings in this matter, the parties entered into a Stipulation of Facts dated December 10, 1987 ("Stipulation") and an Addendum to Stipulation of Facts dated January 28, 1988 ("Addendum"). As set forth in the Stipulation

and Addendum, the following facts, which are relevant to the determination of penalty, have been stipulated:

1. During the period from March 8, 1983 through October 24, 1987, BRC made 90 payments to patrons pursuant to the Incentive Program ("Incentive Payments"). Stipulation at paras, 7, 10 and 13 and Addendum at para. 48.

2. During the period from March 8, 1983 through October 24, 1987, BRC patrons receiving Incentive Payments were required to use the Incentive Payment in settlement of their outstanding casino debts, Stipulation at paras, 23, 27-29; and during this period of time there was substantial compliance with this requirement, although on several occasions the patrons retained the cage disbursement check. Stipulation at paras. 40-42 and Addendum at paras. 52, 53 and 58.

3. During the period of time from March 8, 1983 through October 24, 1987, BRC entered into 90 Incentive Agreements with patrons pursuant to the Incentive Program. See Copies of the Incentive Agreements in Joint Exhibits 21-24 and 44-61.

4. During the period of time from March 8, 1983 through October 24, 1987, BRC accepted from BRC patrons 84 cage disbursement checks that had been issued to the patrons as Incentive Payments. Eleven cage disbursement checks that had been issued to BRC patrons as Incentive Payments were retained by the patrons. Stipulation at 40 and Addendum at 57. During this same period of time, and, specifically from November 1, 1986 through October 24, 1987, BRC voided 7 of the cage disbursement checks that had been issued to BRC patrons. The proceeds of the 7 voided checks were applied to a redemption transaction on 1 occasion, used as front money deposits on two occasions, and cash was provided to the patron on the remaining 4 occasions. Stipulation at paras. 40 and 42 and Addendum at 57 and 58.

It is the Division's position that BRC has committed 90 violations of N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a); 90 violations of N.J.S.A. 5:12-104(a)(1), and 84 violations of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.25 and the prior Commission Order of May 25, 1982, as memorialized in the Commission Order dated November 15, 1982. In

addition, the Division submits that BRC has committed 2 violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 by: (1) failing to obtain Commission approval prior to adopting and implementing the Incentive Program, and (2) failing to submit the internal procedures and administrative accounting controls of the Incentive Program to the Commission for review and approval and to the Division for review.

As a result of the statutory and regulatory violations committed by BRC, the Division recommends to the Commission that a civil monetary penalty pursuant to N.J.S.A. 5:12-129(5) in the range of $1,084,000 to $1,452,000 be imposed against BRC. With respect to the individual monetary penalties sought for each of the violations, the Division proposes:

1. A civil monetary penalty in the range of $450,000-$550,000 is recommended for the 90 violations of N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a);

2. A civil monetary penalty in the range of $450,000-$550,000 is recommended for the 90 violations of N.J.S.A. 5:12-104(a)(1);

3. A civil monetary penalty of $100,000 is recommended for the 2 violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3; and

4. A civil monetary penalty in the range of $84,000-$252,000 is recommended for the 84 violations of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and the prior Commission order.

The Division also requests that BRC be ordered to desist from any future use of the Incentive Program.

In essence, the Division alleges that 266 violations occurred. The Division alleges that three provisions of the Act were violated and that BRC violated two regulatory provisions. Despite the fact that only five provisions in total could have been violated under the Division's analysis, and the fact that there were 90 incentive transactions, the Division urges that there were 266 violations. The Division arrives at this conclusion by claiming that each and every incentive payment issued by BRC to a patron and each and every check returned by the patron to BRC constituted a separate violation of the Act

and parallel regulations. Additionally, the Division contends that the 90 checks issued by BRC by way of payments to patrons pursuant to the Incentive Program also violated N.J.S.A. 5:12-104(a)(1). Thus, although a total of 90 agreements were entered into with patrons pursuant to the Incentive Program, the Division asserts that these 90 agreements resulted in 264 violations of the Act and regulations. This is unwarranted.

It must be borne in mind that each transaction between BRC and an Incentive Program patron was based on a separate Incentive Agreement. Pursuant to each agreement, an Incentive Payment check was issued by BRC and sometimes resubmitted by the patron to BRC. Thus, the issuance and acceptance of the incentive checks were included acts under the agreements. In essence, the entering of an Incentive Agreement, the issuance by BRC of an incentive check and the patron's resubmission of that check to BRC were all pursuant to one transaction. While there are 90 such agreements, it seems unreasonable to find that there were 264 separate violations. I do, however, concur that BRC committed two violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

(A) The Risk to the Integrity of Gaming Operations

Among the declared public policies of the Act is the furtherance of "public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). The Incentive Program adopted and implemented by BRC without the Commission's review and approval and which, in its initial form provided for a payment to a patron based on his front money deposit (11 Incentive Agreements), in its second phase paid patrons based upon the patrons' outstanding credit balances (15 Incentive Agreements), and in its final form, reimbursed to selected patrons a portion of their gambling losses, undermines the public's confidence in the integrity of gaming operations. In addition, I must question the judgment of BRC's continued use of the Incentive Program following the Division's first complaint.

The Act does not permit a casino licensee to distinguish among classes of gamblers based on gambling losses or the size of a patron's outstanding casino debt. Where a casino provides to selected patrons the funds to satisfy outstanding casino debts for less than the face value of the debts, the public confidence in the integrity of the casino industry is negatively affected.

For purposes of comparison, it should be noted that the Legislature authorized casinos to extend complimentary services and items to casino patrons. See N.J.S.A. 5:12-102(m) and (n). Legitimate complimentaries may be extended to gaming patrons, in large measure, based upon the discretionary decision-making process of each casino licensee. Based on 10 years of the casino experience in New Jersey, it is readily recognized that the preferred patrons, or "high-rollers," receive the extravagant gifts, the best seating at entertaiment events and the most lavish hotel accommodations. However, the Act and, specifically N.J.S.A. 5:12-101, does not provide for casinos to allow any patron, regardless of his status as a gaming patron or the amount of his gambling losses, to receive preferential treatment in the settlment of his outstanding casino credit debts.

As noted in Section I of the Discussion above, both the New Jersey courts and the Commission have recognized that the credit procedures of casinos are among the most sensitive and strictly regulated aspects of casino operations. As the Commission stated in its Final decision dated January 4, 1983 in State of New Jersey v. Boardwalk Regency Corporation, OAL Dkt. Nos. CCC 7452-82, CCC 6325-81 and Agency Dkt. No. 81-32 at page 11:

> [t]he clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in those operations. [emphasis added]

In addition, the New Jersey Supreme Court has ruled, in Uston v. Resorts International Hotel, Inc., 89 N.J. 163 (1982) that the Commission has exclusive authority, pursuant to N.J.S.A. 5:12-100(e) and N.J.S.A. 5:12-70(o), to establish the rules and regulations of all casino games including the pay-offs and odds. Id. at 168-169. The Court added that "[t]he ability of casino operators to determine how the games will be played would undermine (the Commission's) control and subvert the important policy of ensuring the 'credibility and integrity of the regulatory process and of casino operations' N.J.S.A. 5:12-1(b)" Id. at 169.

BRC's Incentive Program provides selected patrons with an unfair advantage over BRC patrons who are not offered similar incentive disbursements. For example, if a participating patron and a non-participating patron are playing side by side at the baccarat pit and wagering and losing the same amounts, the participating patron knows that for every dollar he loses, he will only have to pay a percentage of the total amount

"lost." He knows that he will receive a percentage reimbursement from BRC. If he loses $100,000 and BRC has agreed to reimburse him 10 percent of his losses, he knows that he will receive another $10,000. The non-participating patron, however, is presumably finished playing when he loses his $100,000. He will not receive an additional $10,000 which could provide him with the opportunity to either win back the amounts lost or "soften" the loss. By providing the participating patron with an opportunity for gaming that is not afforded to non-participating patrons, BRC has usurped the Commission's exclusive authority for establishing the regulations for casino games, specifically in the setting of the odds of the games. As the Court noted in Uston, the "credibility and integrity of the regulatory process and of casino operations" has been subverted through BRC's adoption, implementation and continued use of the Incentive Program.

Accordingly, BRC's Incentive Payment program which allows preferred gaming patrons to satisfy their outstanding casino credit debts for less than 100 percent of the debt seriously undermines the declared goal of maintaining public confidence in the integrity of the casino industry. In addition, the issuance of a cash complimentary undermines the integrity and public confidence in the gaming industry.

(B) Seriousness of the Conduct and Whether the Conduct was Purposeful and With Knowledge that it was in Controvention of the Act or Regulations

BRC has been operating an Atlantic City casino since mid-1979. BRC was the second Atlantic City casino to open its doors to the public. At the time that it adopted and implemented the Incentive Program it had been operating under the laws of the State of New Jersey for approximately three and one-half years.

As early as 1980, the Commission expressly recognized that BRC is required "to be familiar with the actual import of the Commission's regualtory scheme" and "is assuredly not to be treated, in terms of its knowledge of the law, as if it were an ordinary layman." State of New Jersey v. Boardwalk regency Corp., et al., Agency Dkt. No. 80-10, OAL Dkt. No. CCC 3916-80, Commission Order dated September 22, 1980; Interim Commission Decision dated July 9, 1981 at pages 16-17. The Commission's comments were made in the context of the internal control review and approval process and are particularly relevant in light of the Division's charges against BRC in this matter.

Moreover, the Commission's comments regarding the strict regulations of casino credit practices, which are quoted above, were made in the Commission's Decision dated January 4, 1983, almost two months before BRC made the first Incentive Payment which is the subject of the Division's first complaint. See State of New Jersey v. Boardwalk Regency Corporation, Oal Dkt. Nos. CCC 7452-82, CCC 6325-81; Agency Dkt. No. 81-32, Final Commission Decision dated January 4, 1983.

From the institution of the Incentive Program to BRC's voluntary termination in late 1987, BRC's conduct of the Program was always open and above-board. BRC always recorded, on its books, the transactions involved in the Program as "incentives." No attempt was made to hide the Program's existence and the Division was well aware of its operation since at least May, 1983. While BRC did not believe that it was violating any statutory or regulatory provisions by operating the Program, based on BRC's prior involvement in the environment of New Jersey casino regulation, as well as prior Commission decisions involving both BRC and the statutory and regulatory sections at issue here, BRC knew or should have known that the Incentive Program did not comply with the strict credit provisions of the Act and the attendant regulations and that the Incentive Program should not have been adopted and implemented without prior Commission approval. While the vast majority of the procedures used by the BRC in the Incentive Program were covered by previous internal control submissions, certain aspects of the Program are not covered by those submissions and the overall concept of the program was also never submitted. As such, the failure of BRC to submit all aspects of the Incentive Program and the overall concept of the program to the Commission for review and approval and to the Division for review prior to implementation of the Program is a serious violation.

There is a bona fide question of fact as to whether BRC knew or should have known that it could not accept checks written on its own account and whether or not BRC knowingly violated a prior Commission Order. While I resolved this issue in favor of BRC, I did find that there was a technical violation of the Act. N.J.S.A. 5:12-101b, N.J.S.A. 5:12-101g, and N.J.A.C. 19:45-1.1 specifically identify the checks which may be accepted by casinos. The Commission was also quite specific in identifying the checks which could be accepted by casinos when it adopted the definition of "casino checks" and the accompanying regulations. In the absence of any language within the Act or regulations expressly permitting the acceptance of checks that are not "casino checks" but which have been issued by the same casino that wishes to accept the check, BRC could not accept the Incentive Program checks.

The check cashing restrictions were included in the Act and regulations in order to prevent credit abuses. None of the credit concerns which prompted the legislature to include these check cashing restitutions in the Act is present in this case. As I stated in section 14 of the Discussion, what is safer than a casino accepting its own check, drawn on its own bank, on its own account, with its own money. There is no extension of credit or risk of the check's not being honored. As such, I consider this violation to be a technical violation and not a serious one.

A few of the Incentive Payment checks were used to establish front money accounts. This therefore enabled patrons to engage in gaming activity. I consider this to be a serious violation of the Act. Both the issues of whether or not the Incentive Program changed the gaming odds or is a cash complimentary are serious violations; however, for the purposes of penalty they should be considered as part of the overall Incentive Program, and the penalty should be imposed based upon the 90 Incentive Agreements.

In sum, BRC knew or should have known, based on its familiarity with the statutory and regulatory requirements in New Jersey and specific rulings from the Commission in early 1982 and 1983, respectively, that the Incentive Program violated the credit provisions of the Act and that it could not have accepted the checks issued as Incentive Payments to its patrons. In addition, BRC most certainly should have known that it should not have adopted and implemented the Incentive Program without first submitting it to the Commission for review and approval, particularly in light of the Commission's express language on that same point in 1980.

(C) Justification or Excuse for the Conduct

The next factor to be considered in the determination of the appropriate sanction to be imposed is the justification or excuse offered by the licensee or registrant. N.J.S.A. 5:12-130c. BRC has offered no justification or excuse for its conduct other than asserting that the Incentive Program does not violate the sections of the Act and regulations cited by the Division. BRC has stressed its belief that neither the Incentive Program nor its operation was in violation of the Act or Commission regulations. Through its witness, Mr. Walsh, BRC explained in detail all of its reasons for not submitting the Program or some of the internal controls to the Commission for its approval. This revolved around BRC's belief that it was not necessary to submit a "marketing program" for the Commission's approval and its belief that most of the Incentive Program's procedures were already covered by previous internal control submissions.

The reasons provided by BRC for adopting the Program was to provide "an incentive to certain casino customers to patronize BRC, . . . because of concerns regarding inadequate foreign currency exchange rates at that time, the length of check clearing times for foreign bank accounts and difficulties encountered by BRC in the collection of payments from foreign patrons." Stipulation at 2. See also Joint Exhibit 85, (Memorandum from: Steve Karoul, "Caesars Atlantic City participates in an Incentive Program that was originally developed by Caesars World International to be used as a marketing tool to attract certain premium high level play that would probably go elsewhere if it were not for the availability of the incentive.") Therefore, it is clear that BRC's decision to institute the Incentive Program was a business decision intended to attract desirable casino patrons.

BRC also raised several equitable defenses which were fully discussed and rejected above. While the legal equitable defenses were rejected above, the facts underlying those defenses may be considered as part of BRC's justification and excuse in operating the Incentive Program. In light of the Division's knowledge of the Program as early as 1983, BRC honestly, albeit wrongly, believed the Program did not violate the Casino Control Act or its implementing regulations.

(D) Prior History of Casino Licensee with Respect to Gaming Activity

N.J.S.A. 5:12-130(d) provides that the Commission shall consider the prior history of the licensee with respect to gaming operations. In that regard, the Division cites five significant prior Commission decisions involving BRC. These cases all relate to sufficient violations whereby BRC made a business decision to proceed without seeking regulatory approval for the activity or conscious determinations to cater to preferred players at the expense of the regulatory process.

1. State of New Jersey v. Boardwalk Regency Corporation, et. al., Agency Dkt. No. 80-10, OAL Dkt. No. CCC 3916-80. Interim Commission Decision dated July 9, 1981; Initial Decision dated May 18, 1981; Final Order dated July 17, 1981.

In this matter, the Division charged BRC with violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.24 (currently 1.25) arising out of BRC's acceptance of 597 personal

checks cashed during the period of time from the date of BRC's opening, June 26, 1979, to September 1, 1979. The personal checks were cashed at the hotel front desk by patrons for the purpose of gambling in the casino. This matter was eventually settled between the parties for $45,000. The parties also agreed to dismiss the matter, with prejudice, with regard to all of the individual respondents. The settlement was included in the Initial Decision, which was adopted by the Commission in a Final Order dated July 17, 1981.

Of particular significance to the present matter from the above-cited case is the Commission's comments regarding the review and approval process of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. The Commission clearly stated that BRC is to be held to an understanding and familiarity "with the statutory and regulatory scheme relating to internal controls . . ." Commission Interim Decision at 15.

2. State of New Jersey v. Boardwalk Regency Corporation, Agency Dkt. No. 81-32, OAL Dkt. Nos. CCC 7452-82 and CCC 6325-81. First Initial Decision dated June 8, 1982; Order of Remand dated August 2, 1982; Second Initial Decision dated October 21, 1982; Final Decision dated January 4, 1983; Final Order dated January 12, 1983.

In this matter, the Division charged BRC with, inter alia, violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25, various games violations and the failure to cooperate with Commission inspectors for transactions involving patron Gaetano Caltagirone "who was known by BRC officials to be a "high roller" and [who had a] credit line of $1.5 million at BRC." Final Decision at 3. The total amount of the fines levied against BRC by the Commission in the Caltagirone matter was $257,000, including a $105,000 penalty for the acceptance of three non-conforming instruments.

3. State of New Jersey v. Boardwalk Regency Corporation et al., Agency Dkt. No. 84-246, OAL Dkt. No. CCC 7352-84. Initial Decision September 9, 1985, Final Order dated October 28, 1985.

In this matter, the Division charged BRC and nine individual respondents with violating the Act and regulations for transactions conducted with a "high roller" patron named Brian Molony regarding the maintenance and operation of its system of internal procedures and accounting controls, the acceptance of cash deposits and cash equivalents and the maintenance and operation of its casino gaming credit system. Initial Decision at 2. Specifically, the Division charged BRC with, inter alia, violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 for failing to seek approval of procedures for the transfer of a

patron's funds to the casino, violations of N.J.S.A. 5:12-101(b) for accepting various instruments which did not conform to the definition of cash equivalents contained in N.J.S.A. 19:45-1.1 and failing to comply with various regulatory provisions regarding customer deposits under N.J.A.C. 19:45-1.24. The matter was eventually settled among the parties. Pursuant to the settlement which was adopted in the Commission's Final Order, BRC's Certificate of Operation was suspended from 10:00 a.m. on November 30, 1985 until 9:59 a.m. on December 1, 1985.

4. State of New Jersey v. Boardwalk Regency Corporation, Agency Dkt. No. 84-429. Final Order dated April 5, 1986.

In this matter, the Division charged BRC with violating N.J.S.A. 5:12-5 and N.J.S.A. 5:12-45 in its conduct of a slot player club promotion known as "The Emperors Club." The matter was settled between the parties for $60,000. The settlement was approved by the Commision by Final Order dated April 5, 1986. A stipulated fact which is relevant to the present action and included within the Stipulation of Settlement at paragraph 8 was the following:

> At no time prior to the implementation of The Emperors Club did BRC submit to the Commission or Division of Gaming Enforcement a description of the eligibility requirements for membership in The Emperors Club.

Similar to the present matter, BRC's exclusion of the Division and Commission from the review and approval process serves as an aggravating circumstance in the penalty determination.

5. State of New Jersey v. Boardwalk Regency Corporation and Jane Haverstick, Agency Docket No. 85-376, OAL Dkt. No. CCC 578-86. Commission Decision dated January 5, 1988. 9 N.J.A.R. 274.

In this matter, the Division charged BRC with the following statutory and regulatory violations:

(i) N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a) for failing to deposit a patron's counterchecks within the statutory and regulatory deposit period.

(ii) N.J.A.C. 19:45-1.11(c)(9), (g) and N.J.A.C. 19:45-1.15(b)(1) for releasing a patron's personal check to a credit executive following the receipt of the check by the casino cage.

The above issues were presented to the Commisison which found violations of all charges. In addition, the Commission found violations of "N.J.S.A. 5:12-101(c), N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.26 resulting from the consolidation involving the alteration by a credit executive of the patron's check outside the casino cage." Commission Decision at 2. With regard to the issue concerning internal control procedures, the Commission's finding of a violation was based on the fact that "alteration of a patron's check submitted for consolidation of counter checks is not a procedure authorized by BRC's internal and accounting controls as required by N.J.S.A. 5:12-99." Commission Decision at 9. As a result, the Commisison imposed a penalty of $50,000 agaist BRC.[7]

As the foregoing cases clearly establish, the present case is not the first time that the Division has charged BRC with violations of Sections 99 and 101 of the Act or with accepting instruments that were not cash equivalents. Although the circumstances may vary, the theme that is common to all of these cases is also present in this case. That is, a willingness to side-step the statutory and regulatory framework when it may interfere with business interests. As former Commissioner Jacobson wrote in his partial concurrence and dissent in the matter involving patron Gaetano Caltagirone, (Separate Opinion of Commissioner Jacobson at 3):

> The motivation behind Boardwalk Regency Corporation's orchestrated defiance was a conscious decision to cater to the whims of a favored patron.
>
> In accepting the patronage and responding to the crude demands of this individual—whom the Casino's legal representative has labelled "an obnoxious person"—Boardwalk Regency Corporation had a clear choice.
>
> The choice was either to halt promptly and firmly this patron's improper behavior and conform with this Commission's authority, or to fawn over this favored patron and defy this Commission's authority.
>
> The evidence before us demonstrates that Boardwalk Regency Corporation made an unfortunate, unwise choice. The "obnoxious" patron went home after four days. This Commission meets every Tuesday.

[7] The Commission's Decision has been appealed by BRC.

> I find no evidence to mitigate the casino management's conduct. It is impossible to justify a two-tier system of regulation, one for the $2 bettor and another for the million-dollar high roller.

The majority in the Caltagirone case added the following comments regarding the Commission's decision to increase the Administrative Law Judge's recommended penalty of $20,000 to $40,000 for BRC's failure to cooperate with Commission inspectors:

> The justifications for such increases are the aggravating factors present in the BRC's attempts to intimidate and interfere with Commission inspectors. Such direct interference with the Commission's functions impugns the integrity of the regulatory process and of casino operations. Moreover, BRC purposely and deliberately undertook these bullying tactics at the direction of high level supervisory personnel for the expressed purpose of favoring a valued patron. The motive was simple greed. Only the absence of any similar transgression by BRC before or after this incident and the dearth of precedent in sanctioning such conduct incline us to limit our response to a monetary sanction against this corporate respondent. We choose to believe that such a sanction will be sufficient to underline the gravity of this conduct and to deter future miscreance. If we are wrong in this judgment, we will not hesitate to join our dissenting colleague in any future case involving any such impudence and disrespect to the regulatory scheme.

[Final Decision at 23 and 24; emphasis added]

Despite this warning by the Commission delivered on January 4, 1983, BRC made the first unapproved Incentive Payment to a preferred BRC patron two months later on May 8, 1983.

Similarly, BRC contends in the present matter that it was not required to seek Commission approval of the Incentive Program or the procedures thereto because it was a self-described marketing program and the procedures had already been addressed in their approved internal control submission. BRC also contends that the Incentive Program does not violate Section 101 of the Act or the accompanying regulations because the full tax is paid on the patrons' losses, the Incentive Payment was made after the patron's gambling activity, and that Section 101(g) and the Commission's Order of November 15, 1982 does not apply to a casino's acceptance of its own checks.

The facts presented and the arguments raised by BRC in this matter are reminiscent of the facts and arguments raised in the five cases summarized above. That is, BRC has unilaterally decided whether its actions comply with the Act and regulations and, having

made that decision, has acted in accordance with those decisions. BRC's decisions in the instant matter, like the decisions reached in the five previous decisions, were in error.

In the Caltagirone case, the Commission suggested that precedent plays an important part in any penalty determination by stating that "[o]nly the absence of any similar transgression by BRC before or after this incident and the dearth of precedent in sanctioning such conduct incline us to limit our response to a monetary sanction against this corporate respondent." Final Decision at 24. In the Molony matter, the Commission approved the settlement between the parties which called for the closing of BRC's doors to the gaming public. Both the Molony and Caltagirone cases revolved around BRC's catering to a preferred patron and involved decision making of senior management. Similarly, the instant matter involves BRC's decision to implement a "marketing" program designed to attract patrons that might not otherwise patronize BRC. In addition, the decision to adopt and implement the Incentive Program involved senior management. See e.g., Joint Exhibits 1-20 and 85 and 86.

Following the rationale of the Commission in the Caltagirone casee, a severe monetary penalty is now appropriate against BRC. BRC made a business decision to adopt and implement the Incentive Program to cater to preferred casino patrons. During the course of making that decision, the regulatory authorities were excluded. As a result of that decision, BRC has financially benefited. An indication of how financially succesful BRC's decision has been is found in the fact that the four patrons who received Incentive Payments during the period from February 9, 1987 through October 24, 1987, lost over $4,000,000 at BRC. The entire amount paid out in incentives by BRC since its inception of the program in early 1983 is $2,550,610. Stipulation at 16 and Addendum at 50. There can be no argument that from a financial standpoint BRC succeeded in making the correct decision, however, from the regulatory and integrity perspective, BRC has failed once again.

Also significant in the detemination of penalty in this matter is BRC's history of regulatory non-compliance and the circumstances underlying those instances. In the Caltagirone and Molony matters, BRC was severely penalized for the business decisions made for the benefit of high rollers. The same underlying fact is present in the instant matter. Unlike the Caltagirone matter, however, there is no "dearth of precedent" in this case.

Accordingly, a severe monetary penalty should be imposed based on BRC's prior regulatory history, particularly since three of the four issues presented in the present case are similar to issues which were previously the subject of litigation in which the Commission issued final decisions prior to the start of the Incentive Program.

(E) Corrective Measures Implemented by the Casino Licensee

Since the filing of the Division's second complaint on November 17, 1987, and Commission consideration of the Division's Request for a Cease and Desist Order on November 25, 1987, BRC voluntarily ceased the operation of its Incentive Program pending the outcome of this proceeding. Prior to that time, however, BRC continued offering Incentive Payments to patrons, even after the Division had filed the first complaint in this matter.

During the period from the filing of the Division's complaint on February 19, 1987, up to the filing of the second complaint, BRC entered into 12 Incentive Agreements with 4 different patrons. The total amount of Incentive Payments paid to those patrons was $464,300. Moreover, BRC continued to alter and modify the Incentive Program procedures during the period following the Division's first complaint. See e.g., Joint Exhibits 85 and 86. BRC began offering "Incentives for Play" to selected patrons, which "incentives" do not appear to have been offered to patrons during the period covered by the first complaint. Addendum at 54.

Technically, the continuation of the Program after the filing of the Division's first complaint did not violate any order or directive of the Commission. The Division could have sought a cease and desist order, pursuant to N.J.S.A. 5:12-109, as it had done on previous occasions. However, the Division did not do so. Rather, nine months after filing its initial complaint, the Division filed a second complaint and concurrently sought the entry of an order requiring BRC to cease the operation of the Incentive Program. This application was denied; no appeal was sought. Subsequently, BRC voluntarily terminated the Program even after the Division's petition for a cease and desist order was denied.

As indicated above, the wisdom of a casino continuing a course of conduct after the Division has filed a complaint alleging the illegality of that conduct is highly questionable.

The more prudent action in such a highly regulated industy is to immediately, voluntarily suspend the questionable program and present the issue to the Commission for resolution. BRC, however, made a business decision to continue offering the Incentive Program to selected caisno patrons, despite the filing of the Division's complaint on February 19, 1987. BRC also continued making modifications to the Incentive Program based on business considerations and "market conditions." See Joint Exhibit 85. Having made that decision, BRC must now face the consequences of that decision. Thus, BRC's continued use of the Incentive Program following the filing of the Division's first complaint can only serve as an aggravating factor to any penalty imposed.

ORDER

Based upon the above, I **CONCLUDE** that the violations of N.J.S.A. 5:12-101a(1), and (2), b, and c; 5:12-100e; 5:12-70o; 5:12-14a; and 5:12-102m; and N.J.A.C. 19:45-1.24(a)1; 1.25(a)2, (b), and (c)3, and 1.9 are all part of and included in the Incentive Program. I further **CONCLUDE** that there were 90 Incentive Program transactions.

It is hereby **ORDERED** that the respondent, Boardwalk Regency Corporation, be hereby fined $500,000 for the above violations of the Casino Control Act.

I further **CONCLUDE** that Boardwalk Regency Corporation committed two violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 by (1) failing to obtain Commission approval prior to adopting and implementing the Incentive Program, and (2) failing to submit the intenal procedures and administrative accounting controls of the Incentive Program to the Commission for review and approval and the Division for review. These violations are separate and distinct from the violations involved in the operation of the Program discussed above. In light of the repsondent's extensive prior record with the Commission and particularly in light of the Commission's 1981 and 1986 decisions, these are serious violations.

It is therefore further **ORDERED** that the respondent, Boardwalk Regency Corporation, be hereby fined $250,000 for the above violations of the Casino Control Act.

It is further **ORDERED** that the respondent, Boardwalk Regency Corporation, is to pay the civil penalties imposed above upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

It is further **ORDERED** that Count III of the complaint filed by the Division on February 19, 1987, and paragraphs 25, 26, and 27 of Count I of the complaint filed by the Division on November 17, 1987, (the issues relating to the alleged violations of N.J.S.A. 5:12-104a(1)) be **DISMISSED WITH PREJUDICE.**

It is further **ORDERED** that the respondent, Boardwalk Regency Corporation, cease and desist from operating its Incentive Program and refrain from reinstituting the Incentive Program or any similar program without the express prior approval of the Commission.

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

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

September 12, 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9-13-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 15 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

Stipulation of Facts, dated December 10, 1987

JOINT EXHIBITS

(J-1 through J-29 located in red binder)

J-1 Memorandum from Robert Reilert to file, dated June 24, 1983

J-2 Transmittal slip and memorandum from Larry Woolf to Steve Karoul, dated November 7, 1983

J-3 Memorandum from Ells Gaskill to Cage Supervisors and Assistants, dated December 20, 1983, regarding Customer Incentives

J-4 Memorandum from Steve Karoul to Distribution, dated January 18, 1984, regarding Quek/Yew Group from Malaysia

J-5 Memorandum from Ron Azzolina to Don Klinkner, dated January 24, 1984, regarding CWIC Customer referrals

J-6 Memorandum from R. Azzolina to J. Yee, T.J. Tejeda, R. Dakak and S. Karoul, dated January 24, 1984, regarding International Customers: Approval Procedure

J-7 Memorandum from Steve Karoul to Ron Azzolina, dated March 8, 1984, regarding Caesars World International - Far East Policies for Caesars Atlantic City

J-8 Memorandums from Steve Karoul to Distribution and to Ron Azzolina, dated May 22, 1984, and April 10, 1984, regarding Caesars World International - Far East Policies for Caesars Atlantic City

J-9 Memorandum from Steve Karoul and Bob Siegel to Peter Boynton, dated September 28, 1984, regarding International Customers

J-10 Memorandum from Peter Boynton to Steve Karoul, dated October 8, 1984, regarding Standard Operating Procedures - International Customers

J-11 Memorandum from J. Terrence Lanni to Distribution, dated November 23, 1984, regarding CWIC - Far East Front Money/Credit Incentive Discount Program

J-12 Memorandum from J. Terrence Lanni to Distribution, dated January 7, 1985, regarding Revised Policies and Procedures

J-13 Memorandum from J. Terrence Lanni to Distribution, dated May 16, 1985, regarding CWIC Far East Policy

J-14 Memorandum from Margaret Hee to Distribution, dated September 6, 1985, regarding Recommended CWIC Far East Airfare Policy and Marketing Program

J-15 Memorandum from Margaret Hee and Don Klinkner to Don Allison, Larry Woolf and Peter Boynton, dated December 26, 1985, regarding List of Customers to continue to receive ten-percent discount

J-16 Correspondence from Deno Marino to Fredric Gushin, dated October 16, 1986 (with attachments)

J-17 Memorandum form C.E. Smyth to Manual, dated December 3, 1986, regarding ten-percent discount on losses

J-18 Memorandum summarizing events of the issuance of an incentive payment to Yuk Leung Lo with attached copy of Yuk Leung Lo's Incentive Agreement

J-19 Listing of various company policies

J-20 Memorandum from J. Terrence Lanni to Jackie Yee regarding Hong Kong Credit Policy (undated)

J-21 Documentation of incentive payments for the period from March 8, 1983, to December 21, 1983, for the following BRC patrons:

21A K.T.
21B B.O.
21C V.V. (Mr.)
21D V.V. (Mrs.)
21E A.C.
21F E.S.C.
21G A.C.
21H A.C.
21I S-Y.L.
21J K.S.W.
21K C.K.W.
21L K.F.L
21M S-Y.L.
21N W.B.H.
21O C.B.
21P S.M.S.
21Q A.C.
21R P.L.
21S S.M.S.

J-22 Documentation of incentive payments for the period from January 31, 1984, to December 10, 1984, for the following BRC patrons:

22A W.K.T.
22B L. Chye Q.
22C L. Chan Q.
22D A.C.
22E A.C.
22F A.C.
22G A.C.

22H P.L.
22I A.C.
22J A.C.
22K A.C. (payee: BRC)
22L A.C.
22M A.C.
22N A.C.

J-23 Documentation of incentive payments for the period from January 1, 1985, to November 24, 1984, for the following BRC patrons:

23A T.P.Y. (J.)
23B T.P.Y. (E.)
23C A.C.
23D S.P.L.
23E K.P.L.C.
23F P.L.
23G H.S.C.P. (payee: BRC)
23H A.C.
23I H.S.C.P.
23J G.Y.
23K V.C.
23L A.C.
23M H.S.S.P.
23N A.C.
23O H.S.F.
23P T.P.Y. (E.)
23Q K.S.W.
23R S.Y.L. (payee: BRC)
23S K.N.

J-24 Documentation of incentive payments for the period from January 4, 1986, to October 29, 1986, for the following BRC patrons:

24A L.M.
24B L.M.
24C L.M.
24D L.K.P.C.
24E S.M.S.
24F S.M.S.
24G S.S.
24H A.C.
24I N.L. (payee: Caesars Atlantic City)
24J L. Chye Q.
24K L. Chan Q.
24L L.M.
24M K.C.
24N C.S.W.
24O L. Chan Q.
24P L. Chye Q.
24Q H.H. (payee: Caesars Atlantic City)
24R K.N.
24S L. Chan Q.

J-25 Transcript of investigative interview of Michael Walsh

J-26 Transcript of investigative interview of Jane Blackton

J-27 Transcript of investigative interview of Ellsworth Gaskill

J-28 Transcript of investigative interview of Howard Bacharach

J-29 Transcript of investigative interview of Stephen Karoul

(J-30 through J-42 are attached to the Stipulation of Facts)

J-30 Authorization for foreign casino customer incentive payment plan (Ex. A)

J-31 Authorization for foreign casino customer incentive payment plan (revised) (Ex. B)

J-32 Incentive agreement utilized by BRC (Ex. C)

J-33 Memorandum, dated August 25, 1982, from Larry Woolf to the credit committee file, re: foreign incentive plan (Ex. D)

J-34 Memorandum, dated September 2, 1983, from J. Terrence Lanni establishing the guidelines to be employed in the conduct of the Incentive Program at BRC (Ex. E)

J-35 Memorandum from Ed Sutor, dated May 22, 1984, establishing the in-house policies and procedures of BRC for the incentive program (Ex. F)

J-36 The policies and procedures of BRC for the Incentive Program, dated November 21, 1984 (Ex. G)

J-37 The policies and procedures of BRC's Incentive Program, dated December 18, 1984 (Ex. H)

J-38 The policies and procedures of BRC's Incentive Program, dated March 21, 1985 (Ex. I)

J-39 The policies and procedures of BRC's Incentive Program, dated April 10, 1985 (Ex. J)

J-40 A copy of BRC's petition filed with the Casino Control Commission on or about March 1, 1982, for a petition for declaratory ruling (Ex. K)

J-41 A final order of the Casino Control Commission, dated November 15, 1982, memorializing the Commission's decision of May 25, 1982, which denied BRC's petition for declaratory ruling (Ex. L)

J-42 Investigation report conducted by Division Agent Richard Williamson, regarding BRC's Incentive Program, dated May 3, 1983 (Ex. M)

J-43 Addendum to Stipulation of Facts, dated January 28, 1988

(J-44 through J-84 are attached to J-43)

J-44 Incentive Agreement of A.G., dated November 21, 1986

J-45 Incentive Agreement of A.G., dated November 23, 1986

J-46 Incentive Agreement of A.C., dated November 30, 1986

J-47 Incentive Agreement of N.L., dated November 26, 1986

J-48 Incentive Agreement of K.N., dated January 31, 1987

J-49 Incentive Agreement of K.N., dated February 5, 1987

J-50 Incentive Agreement of L.M., dated February 27, 1987

J-51 Incentive Agreement of N.L., dated March 7, 1987

J-52 Incentive Agreement of A.C., dated April 11, 1987

J-53 Incentive Agreement of S.W.C., dated May 24, 1987

J-54 Incentive Agreement of S.W.C., dated May 31, 1987

J-55 Incentive Agreement of A.C., dated June 14, 1987

J-56 Incentive Agreement of N.L., dated June 24, 1987

J-57 Incentive Agreement of L.M., dated July 3, 1987

J-58 Incentive Agreement of A.C., dated August 16, 1987

J-59 Incentive Agreement of L.M., dated September 24, 1987

J-60 Incentive Agreement of K.N., dated October 23, 1987

J-61 Incentive Agreement of L.M., dated October 23, 1987

J-62 BRC incentive reimbursement check issued to A.G., dated November 21, 1986

J-63 BRC incentive reimbursement check issued to A.G., dated November 23, 1986

J-64 BRC incentive reimbursement check issued to A.C., dated November 30, 1986

J-65 BRC incentive reimbursement check issued to N.L., dated December 12, 1986

J-66 BRC incentive reimbursement check issued to K.N., dated January 31, 1987

J-67 BRC incentive reimbursement check issued to K.N., dated February 5, 1987

J-68 BRC incentive reimbursement check issued to K.N., dated February 5, 1987

J-69 BRC incentive reimbursement check issued to L.M., dated March 1, 1987

J-70 BRC incentive reimbursement check issued to N.L., dated April 8, 1987

J-71 BRC incentive reimbursement check issued to A.C., dated April 13, 1987

J-72 BRC incentive reimbursement check issued to S.W.C., dated May 24, 1987

J-73 BRC incentive reimbursement check issued to S.W.C., dated May 31, 1987

J-74 BRC incentive reimbursement check issued to A.C., dated June 14, 1987

J-75 BRC incentive reimbursement check issued to N.L., dated July 1, 1987

J-76 BRC incentive reimbursement check issued to L.M., dated July 3, 1987

J-77 BRC incentive reimbursement check issued to A.C., dated August 16, 1987

J-78 BRC incentive reimbursement check issued to L.M., dated September 25, 1987

J-79 BRC incentive reimbursement check issued to L.M., dated September 27, 1987

J-80 BRC incentive reimbursement check issued to L.M., dated September 27, 1987

J-81 BRC incentive reimbursement check issued to L.M., dated October 23, 1987

J-82 BRC incentive reimbursement check issued to K.N., dated October 23, 1987

J-83 BRC incentive reimbursement check issued to L.M., dated October 23, 1987

J-84 BRC incentive reimbursement check issued to L.M., dated October 24, 1987

J-85 Caesars World International Memorandum written by Steve Karoul, dated July 16, 1987, re: foreign incentive program

J-86 Caesars Atlantic City Memorandum written by Michael J. Walsh, dated September 25, 1987, re: patron incentives

J-87 Interrogatories of Marybeth Butler

J-88 Interrogatories of Richard H. Williamson

J-89 Interrogatories of John R. McGovern

J-90 Interrogatories of Richard Carretta

For the Petitioner:

P-1 Casino Control Commission's and Division of Gaming Enforcement's recommended changes, dated August 16, 1985, to Boardwalk Regency's internal control submission, dated August 31, 1984

For the Respondent:

R-1 Sections 24 through 27 of Boardwalk Regency Corporation's 1984 internal control submission pertaining to N.J.A.C. 19:45

R-2 Applicable sections of Boardwalk Regency Corporation's original internal control submissions pertaining to N.J.A.C. 19:45, effective August 1, 1979

R-3 Sections 24 through 27 of Boardwalk Regency Corporation's current internal control submissions pertaining to N.J.A.C. 19:45, revised February 26, 1987

R-4 Partial Summary of Testimony of Michael Walsh

R-5 Section 15 of Boardwalk Regency Corporation's 1983 internal control submissions, re: accounting controls within the casino cage

R-6 Section 15 of Boardwalk Regency Corporation's current internal control submission, revised June 26, 1987, re: accounting controls within the casino cage

R-7 Section 1 of Boardwalk Regency Corporation's 1983 internal control submission, re: definitions

R-8 Section 1 of Boardwalk Regency Corporation's current internal control submission, revised June 26, 1987, re: definitions

R-9 Boardwalk Regency Corporation's internal cage disbursement account policy and procedure, prepared June 18, 1985

R-10 Casino Control Commission letter, dated Janaury 25, 1988, re: interrogatories to Deno Marino

R-11 Letter of Robert L. Hollingshead to Mark Neary, dated February 12, 1988

R-12 Casino Control Commission letter, dated March 1, 1988, re: interrogatories to Deno Marino

R-13 Letter of Robert L. Hollingshead to Mark Neary, Esq., dated March 28, 1988, re: interrogatories to Deno Marino

WITNESSES

For the Petitioner:

None

For the Respondent:

Michael J. Walsh, assistant vice-president of finance and corporate comptroller for Boardwalk Regency Corporation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-109
ORDER NO.: 89-14-21-E
OAL DOCKET NO. CCC 178-89
(ON REMAND CCC 8478-87)

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

Complainant,

v.

BOARDWALK REGENCY CORP.,

Respondent.

ORDER

A Stipulation of Settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the Stipulation of Settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 29, 1989, and April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Boardwalk Regency Corp. (BRC) pay a civil penalty of $10,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to the Stipulation of Settlement, BRC contribute a sum not less than $45,000 to the

John F. Kennedy Medical Center in Edison and a sum not less than $45,000 to the New Hope Facility on the grounds of Marlboro State Hospital; and

IT IS FURTHER ORDERED that a letter of reprimand be issued to BRC for violating N.J.S.A. 5:12-119(b), N.J.S.A. 5:12-103(f)(2) and N.J.A.C. 19:50-1.6(a).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 178-89

(On Remand CCC 8478-87)

AGENCY DKT. NO. 88-109

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

v.

BOARDWALK REGENCY
CORPORATION,
Respondent.

Katherine A. Smith and Mitchell A. Schwefel, Deputy Attorneys General, for the petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Lloyd D. Levenson, Esq., for the respondent, Boardwalk Regency Corporation (Cooper, Perskie, April, Niedelman and Wagenheim, attorneys)

Record Closed: January 31, 1989 Decided: February 15, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, Boardwalk Regency Corporation, which operates Caesars Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on various dates, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

New Jersey Is An Equal Opportunity Employer

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Boardwalk Regency Corporation (Caesars) filed an Answer to the complaint on November 9, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honroable Richard Voliva. The matter was originally scheduled for hearing on June 20, 21, 22, 23, and 24, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 11, 12, 13, 14 and 15, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 12, 1988. The record closed on July 15, 1988.

The matter was remanded to the OAL for further proceeding by order of the Commission on November 3, 1988. On January 3, 1989, the parties submitted another proposed settlement agreement. The record closed on January 31, 1989, upon receipt of the remanded files.

FINDINGS OF FACT

The Division and Caesars have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I FIND:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidence by their execution of the settlement agreement.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSION OF LAW AND ORDER OF DISPOSITION

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

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

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

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

2-15-89
DATE

Linda W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2/17/89
DATE

Virginia Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 21 [redacted]
DATE

Jayne LaVecchia/KS
OFFICE OF ADMINISTRATIVE LAW

lar

LIST OF EXHIBITS

Joint Exhibits:

J-1 Harrah's At Trump Plaza Rules of the Games
J-2 Responsibilities of Floorperson
J-3 Responsibilities of Pit Boss
J-4 Responsibilities of Casino Shift Manager
J-5 Video Surveillance Tape
J-6 Sworn Interview of Luis Gutierrez
J-7 Sworn Interview of Thomas Spencer
J-8 Sworn Interview of Mary Spadaccini
J-9 Sworn Interview of John M. Hilyard
J-10 Sworn Interview of Daw guerrier
J-11 Sworn Interview of Albert L. Kuykendall
J-12 Sworn Interview of Libby Gehman

LIST OF WITNESSES

None

RECEIVED
STATE OF NEW JERSEY
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JAN 12 8 45 AM '89

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By: Lloyd D. Levenson, Esquire
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Boardwalk Regency Corporation
(609) 344-3161

STATE OF NEW JERSEY
CCC DKT. NO. 88-109
OAL DKT. NO. CC-8478-87

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT Complainant, v. BOARDWALK REGENCY CORPORATION, Respondent.	STIPULATION OF FACTS AND SETTLEMENT

The matters in the above-captioned matters having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Assistant Attorney General and Lloyd D. Levenson, Esq., Counsel for Respondent, Boardwalk Regency Corporation, it is hereby stipulated to and agreed by and among the parties as follows:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "Division"), now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., hereinafter referred to as "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent Boardwalk Regency Corporation (hereinafter referred to as "BRC") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey, and has now and at all times referenced herein has had its principal place of business located at 2100 Pacific Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. BRC is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to BRC effective on October 25, 1980. Said casino license has been renewed on an annual basis. BRC has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. BRC is the holder of, and operates pursuant to, a Certificate of Operation effective June 26, 1979, at which time, BRC was the holder of a temporary casino permit. Said Certificate of Operation entitles BRC to operate a casino hotel (hereinafter referred to as "Caesars") in accordance with the provisions of the Act, and the regulations promulgated thereunder.

5. BRC is now, and at all times material to this matter, has been the holder of a Casino Hotel Alcoholic Beverage ("C.H.A.B.") license issued by the Commission effective October 25, 1980 and renewed annually thereafter authorizing BRC to possess, store and sell alcoholic beverages in accordance with the terms of such authorization, Section 10_ of the Act, N.J.S.A. 5:12-103 and the regulations promulgated thereunder at N.J.A.C. 19:50-1.1, et seq.

6. On several occasions between Summer, 1986 and January 9, 1987, including those occasions specified below, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Caesars' casino room and gambled at blackjack. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate.

7. On 14 (fourteen) separate occasions, the following Caesars' floorpersons on the following dates and times observed Debra Kim Cohen gambling at blackjack and evaluated her gambling activities through the preparation of player rating forms:

(a) Carol Remaley, Lic. #17937-21; November 4, 1986; 1:20 p.m.

(b) Eleanor Dougherty, Lic. #6206-21; November 6, 1986; 6:50 p.m.

(c) Cuneo Sorrentino, Lic. #34115-21; November 7, 1986; 9:10 p.m.

(d) Dorothy Simonetti, Lic. #32344-22; November 10, 1986; (unknown).

(e) Batiyah Mathis, Lic. #992-21; November 10, 1986; 2:50 p.m.

(f) Harold Gerhardt, Lic. #3102-11; November 11, 1986; 12:00 noon.

(g) Joseph Seyfert, Lic. #42965-21; November 11, 1986; 12:20 p.m.

(h) Gene Platt, Lic. #3823-11; November 12, 1986; 1:00 p.m.

(i) Beryl L. Steel, Lic. #337-11; November 12, 1986; 6:45 p.m.

(j) Beryl L. Steel, Lic. #337-11; November 12, 1986; 11:50 p.m.

(k) Beryl L. Steel, Lic. #337-11; November 13, 1986; 1:55 a.m.

(l) Leigh Ann Carchia, Lic. #2575-11; November 13, 1986; 12:20 p.m.

(m) Catherine McCann, Lic. #4335-21; November 14, 1986; 3:00 p.m.

(n) Harold Gerhardt, Lic. #4749-40; January 9, 1987; (unknown).

Attached hereto and made part of the record hereof as Exhibit B are true and correct copies of the player rating slips for Debra Kim Cohen, a/k/a Kim Cohen.

8. On November 12, 1986, Caesars' casino host Susan Cihowski, license #25158-21, issued Debra Kim Cohen two (2) complimentary tickets to a performance by the Pointer Sisters, a singing group, as a result of Cohen's rated blackjack play in Caesars' casino. Attached hereto and made part of the record hereof as EXhibit C is a true and correct copy of the voucher authorizing the issuance of complimentary tickets to Debra Kim Cohen on November 12, 1986.

9. On or about November 13, 1986, Debra Kim Cohen was issued by Caesars' casino host, Susan Cihowski, Lic. #25158-21, complimentary overnight accommodations, a complimentary alcoholic beverage and complimentary meals as a result of the rated blackjack play in Caesars' casino. The total value of these complimentaries was approximately $245.00. Attached hereto and made a part of the record hereof as Exhibit D are true and correct copies of the Transaction Summary for the Complimentary Pass Reporting System and true and correct copies of complimentaries issued to Debra Kim Cohen on November 13, 1986.

10. On or about November 14, 1986, Debra Kim Cohen was issued by Caesars' floor personnel complimentary overnight accommodations, complimentary meals and non-alcoholic beverages as

a result of her rated blackjack play in Caesars Casino. The total value of these complimentaries was approximately $160.00. Attached hereto and made a part of the record hereof as Exhibit E are true and correct copies of the Transaction Summary Complimentary Pass Reporting System and true and correct copies of complimentaries issued to Debra Kim Cohen on November 14, 1986.

11. Leonard Cohen has stated, in a sworn statement given to the Division, that during the month of August 1986, he observed his daughter, Debra Kim Cohen, gambling at blackjack in the casino room at Caesars. Leonard Cohen has further stated that upon making this observation, he informed an unidentified blackjack dealer and an unidentified floorperson at the table where he says his daughter was gambling that she was 17 (seventeen) years old, a juvenile and had no legal right to gamble; and further, Debra Kim Cohen stated, in her sworn statement to the Division, that her father did observe her gambling and removed her from the table.

12. On or about October 5, 1986, Leonard Cohen provided Respondent's Security Department with a photocopy of a photograph of his daughter, Debra Kim Cohen, upon which photograph was her date of birth, and advised the Security Department that she was a missing person, and, if located, to notify the Atlantic City Police Department. Mr. Cohen stated, in his sworn statement to the Division, that he informed Respondent's Security Department that his daughter was a minor and should not be allowed to gamble in the casino. Ms. Cohen was located on or about October 9, 1986 in another casino hotel. Attached hereto and made a part of the record hereof as Exhibit F is a true and correct copy of the photocopy of the photograph Mr. Cohen provided to Caesars'

Security Department and a newspaper article dated October 9, 1986 which appeared in The Press.

13. By letter dated November 25, 1986, and received by Caesars, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Caesars that Debra Kim Cohen had been rated, provided complimentaries and permitted to continue gambling at Caesars and that said activities must cease. Subsequent to receipt of Mr. Press' letter, Caesars inputted the following information into its computer:

> 11-86 - Request ID (D.O.B.) prior to issuing comp (HB-11-86)
>
> 12-11-86 - No comps/No Credit (CRC-12-11-86)

Attached hereto and made a part of the record hereof as Exhibit G is a true and correct copy of the letter from Mr. Press to Caesars dated November 25, 1986.

14. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

> Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beveages to remain in a casino is a disorderly person...

15. N.J.S.A. 5:12-103f(2) was effective at all times referenced herein and provides in pertinent part:

> It should be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this Act.

16. N.J.A.C. 19:50-1.6(a) was effective at all times referenced herein and provides in pertinent part with respect to casino hotel alcoholic beverage licenses:

> No licensee shall:
>
> 1. Sell, serve, or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age at which a person is authorized to purchase or consume alcoholic beverages in New Jersey, or to any person actually or apparently intoxicated; or
>
> 2. Permit the consumption of any alcoholic beverage by such person on licensed premises.

17. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino and gamble, and allowing her to consume an alcoholic beverage, as set forth more fully herein, Respondent BRC violated N.J.S.A. 5:12-119(b); N.J.S.A. 5:12-103f(2); and N.J.A.C. 19:50-1.6(a).

18. Further, Debra Kim Cohen entered Caesars Casino and gambled therein and consumed an alcoholic beverage, notwithstanding that, prior thereto, Leonard Cohen has stated, in his sworn statement to the Division, that he notified Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Caesars.

19. Although, on or about November 25, 1986, Respondent was notified by Richard L. Press, Esquire, Leonard Cohen's attorney, that Mr. Cohen's daughter was a minor and as a consequence, she should not be permitted to gamble at Caesars. Debra Kim Cohen did enter its casino and gamble therein on January 9, 1987.

20. Complaint No. 88-109 is the second complaint filed by the Division charging Respondent with statutory violations

stemming from the gambling activities of underage persons in Caesars' casino room. The first such complaint, State v. Boardwalk Regency Corporation, CCC Docket No. 87-46 (Final Order dated December 16, 1987) charged Caesars with violations of N.J.S.A. 5:12-119(b) stemming from the gambling activities of two underage persons in Caesars' casino room in July 1986. The Commission found that Respondent had violated N.J.S.A. 5:12-119(b), assessed a total monetary penalty of $2,000 (two thousand dollars), i.e. $1,000 (one thousand dollars) per underage person. Attached hereto and made a part of the record hereof as Exhibits H and I, respectively, are true and correct copies of the Initial Decision and the Final Order relative to Complaint No. 87-46.

21. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following exhibits:

(a) Sworn statements of Debra Kim Cohen of July 1, 1987, taken by the Division prior to the filing of Complaint No. 88-109 and taken with no representatives of Boardwalk Regency Corporation entitled to be present. Attached hereto and made a part of the record hereof as Exhibit J.

(b) Deposition upon oral examination of Debra Kim Cohen taken on July 1, 1988 with representatives of the Division and Boardwalk Regency Corporation present. Attached hereto and made a part of the record hereof as Exhibit K.

(c) Certification of Robert E. Reilert, Vice President, General Counsel and Secretary of Boardwalk Regency Corporation. Attached hereto and made a part of the record hereof as Exhibit L.

(d) Certification of Emily Wimberly, Boardwalk Regency Corporation Security Director. Attached hereto and made a part of the record hereof as Exhibit M.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. In recognition of the foregoing, the parties agree that the Commission may impose a letter of reprimand or censure against Respondent BRC, which letter of reprimand or censure shall be made a permanent part of the file of Respondent BRC, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

2. The parties further agree that the Commission may impose a civil penalty of up to $100,000 (one hundred thousand dollars), against Respondent BRC if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

3. The parties further agree that to the extent that any civil penalty imposed by the Commission against Respondent BRC is less than $100,000 (one hundred thousand dollars), Respondent BRC shall contribute the difference between $100,000 (one hundred thousand dollars) and the amount of any civil penalty to the John F. Kennedy Medical Center in Edison, New Jersey and the New Hope facility located at the Marlboro State Hospital in Marlboro, New Jersey. Any amount of money contributed to said hospitals will be divided equally between them. The Division reserves the right to request and further recommend that Respondent's contribution to the above named facilities be utilized for a specific purpose.

4. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. The parties further agree that such settlement shall be in full and final settlement of the allegations contained within the Division's Report in In the Matter of the Applications of the Boardwalk Regency Corporation and the Jemm Company for Renewals of Casino Licenses for 1988-1989, filed with the Commission on September 6, 1988, insofar as those allegations concern the "Deborah Kim Cohen" matter.

6. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey

By: _____
MITCHELL A. SCHWEFEL
Assistant Attorney General

Dated: 12-23-88

Attorneys for Respondent
Boardwalk Regency Corporation
COOPER PERSKIE APRIL
NIEDELMAN & WAGENHEIM, P.A.

By: _____
LLOYD D. LEVENSON, ESQUIRE

Dated: 1/3/89

120188/37

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-426
LICENSE NO. 6985-21 (inactive)
ORDER NO. 88-23-18

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	ORDER
BOARDWALK REGENCY CORPORATION, d/b/a CAESAR'S ATLANTIC CITY AND MARGARET M. KELSCH,	
Respondent.	

A complaint having been filed by the Division of Gaming Enforcement (DGE) against Boardwalk Regency Corporation and Margaret M. Kelsch; and the respondents having been duly served with a copy of the complaint and advised of the right to a hearing and the obligation to file a notice of defense; and the respondent Kelsch having failed to file a notice of defense; and Boardwalk Regency Corporation and the DGE having filed a stipulation of facts; and the Commission having considered at its public meetings of June 1, 1988 and June 8, 1988, whether such facts constituted one or more violations of the Casino Control Act and, if so, what sanctions, if any, were appropriate;

IT IS on this 26th day of January 1989, that the Commission makes the following findings:

(1) as stipulated by Boardwalk Regency Corporation (BRC) and the Division of Gaming Enforcement (DGE), the acceptance by BRC cage cashier Margaret M. Kelsch of six American Express travelers checks in $100 denominations without entering the serial numbers of the checks into the American Express terminal constituted a failure to perform the necessary verification of the travelers checks prior to their acceptance as required by N.J.A.C. 19:45-1.25(e); further, BRC, as Ms. Kelsch's employer, is liable for her conduct; State v. Greate Bay Hotel and Casino, Inc., Hoagland, Binstein, Musso and Freeland, Docket No. A-550-86T6 (1988); State v. Boardwalk Regency Corporation, Docket No. A-2306-87T1 (1988).

(2) Margaret M. Kelsch, by failing to respond to the DGE's complaint, which was duly served upon her, constructively has admitted the facts as charged with respect to a violation of N.J.A.C. 19:45-1.25(e) as described in paragraph 1 above; and

(3) the DGE has not established that any violation of N.J.A.C. 19:45-1.25(c)(4) occurred in this instance.

IT IS ORDERED that Boardwalk Regency Corporation pay a total civil penalty of $600 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

ORDER NO. 88-23-18

IT IS FURTHER ORDERED that Margaret M. Kelsch be reprimanded.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
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Trenton, New Jersey 08625

By: Joseph M. Nardi, III
Deputy Attorney General

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COOPER, PERSKIE, APRIL, NIEDELMAN,
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BOARDWALK REGENCY CORPORATION
d/b/a CAESARS ATLANTIC CITY

FILED
SEP 25 1987
CASINO CONTROL COMMISSION
LEGAL DIVISION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 87-426

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, v. BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY and MARGARET KELSCH, Casino Cage Cashier, Respondents.	CIVIL ACTION STIPULATION OF FACTS

With the above-captioned matter having been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Joseph M. Nardi, III, Deputy Attorney General, and Lloyd D. Levenson, Esquire, of Cooper, Perskie, April, Niedelman, Wagenheim & Weiss,

Attorneys for Respondent Boardwalk Regency Corporation d/b/a Caesars Atlantic City, and said matters having been resolved, it is hereby consented to and agreed by and between the parties that:

1. On October 28, 1986, an unidentified male presented six American Express Travelers Cheques in the individual amounts of $100 to Respondent Margaret Kelsch for the purpose of receiving $600 in cash in exchange for said travelers cheques. Respondent Margaret Kelsch, was employed by BRC as a casino cage cashier in or about March, 1980 and continued to be employed by BRC as a casino cage cashier until her termination on July 28, 1987. She holds a valid casino employee license, #6985-21, which was initially issued by the Commission on or about October 3, 1979, most recently renewed on October 3, 1984 and due to expire on October 31, 1987. Margaret Kelsch has not filed a Notice of Defense within the required time period and is not a party to this Stipulation.

2. From March, 1980 through October 28, 1986, Margaret Kelsch was suspended by BRC management on 4 separate occasions because of cash shortages that occurred during her shift, received 6 written warnings because of cash shortages that occurred during her shift, received a written warning because of a cash overage that occurred during her shift and, in 1983, received a written warning for failing to obtain patron signatures on 2 Com-cheks. In addition, BRC noted in Ms. Kelsch's personnel file that on one occasion in 1983 she failed to obtain a patron's signature on a cash equivalent and on another occasion in 1983 she incorrectly posted a customer's deposit on a customer deposit voucher and customer deposit slip. It is BRC's position that Margaret Kelsch's 7½ year employment record at BRC does not form a basis for

liability against BRC for the actions of Margaret Kelsch on October 28, 1986. BRC also maintains that the disciplinary actions taken against Margaret Kelsch were consistent with BRC's Shortages/Overages Policy, which policy was in effect at all times referenced herein and a copy of which is attached hereto as Exhibit A.

3. The front of the travelers cheques described in paragraph 1 contained no payee, were undated and contained two signatures in the name of "David Valente." The back of the travelers cheques were stamped with the following: "For Deposit Only BRC October 28, 1986 12:36 p.m." The backs of 3 of the travelers cheques also bear a Quebec drivers license number.

4. The serial numbers of the six American Express Travelers Cheques presented for cashing as described in paragraph 1 are:

1. RD109-555-474
2. RD109-555-475
3. RD109-555-476
4. RD109-555-477
5. RD109-555-478
6. RD109-555-479

Attached hereto as Exhibit B are copies of the 6 travelers cheques.

5. As of October 28, 1986, BRC casino cage policies and procedures required BRC casino cage personnel to verify the validity of all American Express Travelers Cheques prior to the acceptance of such cheques from BRC patrons when the total amount of the travelers cheques sought to be cashed equalled or exceeded $100. Attached hereto as Exhibit C is a copy of BRC's casino cage

policies and procedures for the acceptance of American Express Travelers Cheques.

6. The BRC casino cage policies and procedures described in paragraph 5 were adopted pursuant to an agreement between American Express and BRC wherein American Express agreed to guarantee payment on its travelers cheques accepted at the casino cage as long as encashments of $100 or more were authorized through the American Express computer terminal provided by American Express located in the BRC casino cage. The agreement between American Express and BRC and the procedures to be performed are summarized in a letter dated August 12, 1985 from American Express Eastern Regional Manager Carol B. Roberts to BRC Cage Manager Ellsworth Gaskill. A copy of this letter is attached hereto as Exhibit D.

7. The procedures for the acceptance of American Express Travelers Cheques which are summarized in paragraphs 5 and 6 are set forth in greater detail in brochures published by American Express which are entitled "AMERICAN EXPRESS TRAVELERS CHEQUES Encashment Assistance Service" and "It Pays To Watch and Compare". These brochures are provided to all acceptors of American Express Travelers Cheques. Copies of these brochures are attached hereto as Exhibits E and F.

8. Respondent Margaret Kelsch accepted the six American Express Travelers Cheques described in paragraphs 1 and 3 in exchange for $600 in cash which was paid to the unidentified male who represented himself to be "David Valente".

9. Respondent Margaret Kelsch did not enter the serial numbers of any one of the six American Express Travelers Cheques into the American Express Terminal prior to accepting said

travelers cheques for encashment from the person purporting to be David Valente on October 28, 1986.

10. Approximately 30 minutes after the transaction described in paragraphs 8 and 9, an unidentified male presented to BRC Casino Cage Cashier Susan Mitchell, #67256-21, 5 American Express Travelers Cheques in the individual amounts of $100 for the purpose of receiving $500 in cash in exchange for said travelers cheques.

11. The travelers cheques described in paragraph 10 contained no payee, were undated and contained two signatures in the name of "David Valente". The back of the travelers cheques were stamped with the following: "For Deposit Only BRC". The back of the travelers cheques also bear the time and date. The back of 1 of the travelers cheques also bears a Quebec drivers license number.

12. The serial numbers of the five American Express Travelers Cheques presented for cashing as described in paragraph 10 are:

1. RA118-042-848
2. RA118-042-850
3. RA118-042-851
4. RA118-042-852
5. RA118-042-853

Attached hereto as Exhibit G are copies of the 5 travelers cheques.

13. Casino Cage Cashier Susan Mitchell requested identification credentials from the unidentified male and he presented her with a Quebec driver's license issued to David Valente, number V4533-191061-05.

14. Following the receipt of the 5 travelers cheques from the person purporting to be David Valente as described in paragraph 11, Cage Cashier Susan Mitchell attempted to verify the validity of

said travelers cheques by entering the serial number of 1 of the 5 travelers cheques into the American Express computer terminal located in BRC's casino cage.

15. After entering the information into the American Express computer terminal as described in paragraph 14, Cage Cashier Susan Mitchell received information that the travelers cheques presented by the person purporting to be David Valente were stolen travelers cheques.

16. By the time Cage Cashier Susan Mitchell had received the information described in paragraph 15, the person purporting to be David Valente had departed from the casino cage area.

17. Following the incident described in paragraphs 14 through 16, BRC contacted American Express and notified American Express that BRC may have accepted stolen travelers cheques from a patron.

18. On October 28, 1986, Detective William Madden of the Division's Casino Enforcement Section interviewed BRC Cage Supervisor Gina Johnson, CCC #1412-11, and was informed that Respondent Margaret Kelsch had cashed 6 $100 American Express Travelers Cheques that apparently had been stolen.

19. Detective Madden interviewed Respondent Margaret Kelsh, who described the transactions as follows: The patron approached cage window #5 and cashed one cheque in the amount of $100. Respondent Kelsch did not enter the serial number of the travelers cheque into the American Express terminal. The patron took a few steps from the window and then returned to cash 2 additional travelers cheques in the individual amounts of $100. The patron then requested Respondent Kelsch to cash 3 more travelers cheques

in the individual amount of $100, totalling 6 travelers cheques in the amount of $600.

20. On June 16, 1987, the Division filed the instant complaint against Respondents BRC and Margaret Kelsch.

21. The Division's complaint charged Respondents BRC and Margaret Kelsch with violating regulations of the Casino Control Commission in two respects: (1) failing to perform the necessary verification to determine the validity of the 6 American Express Travelers Cheques presented by the person purporting to be David Valente on October 28, 1986, as required by N.J.A.C. 19:45-1.25(e); and (2) accepting these same travelers cheques although they were undated, in violation of N.J.A.C. 19:45-1.25(c)4. BRC denies that the dating requirement contained in N.J.A.C. 19:45-1.25(c)4 applies to cash equivalents such as the instant travelers cheques; BRC also denies that the travelers cheques were undated since they were time and date stamped on the back upon acceptance.

22. With respect to the allegation by the Division that Margaret Kelsch failed to perform the necessary verification to determine the validity of the 6 $100 American Express Travelers Cheques presented by the person purporting to be David Valente prior to their acceptance and the further allegation that BRC is responsible for the failure of Margaret Kelsch to perform the necessary verification, the Division's position is that "necessary verification" of American Express Travelers Cheques requires examining the face of the travelers cheques, watching and comparing the patron counter sign the travelers cheque and entering the serial numbers of the travelers cheques into the American Express

terminal located in BRC's casino cage for the purpose of obtaining an authorization code from American Express.

23. BRC acknowledges that the acceptance of the 6 $100 American Express Travelers Cheques by BRC Cage Cashier Margaret Kelsch in exchange for $600 in cash on October 28, 1986, occurred without entering the serial numbers of the travelers cheques into the American Express Terminal which resulted in the failure to perform the necessary verification of the travelers cheques prior to their acceptance, as required by N.J.A.C. 19:45-1.25(e).

24. Respondent Margaret Kelsch, as well as every cashier employed by BRC, receives at the outset of their employment on-the-job training at a cage window. Periodically, each cashier attends a re-training program in which policies and procedures relating to the duties of cage cashiers are reviewed. Such a meeting was held on October 2, 1986; a copy of a memorandum outlining the areas of discussion is attached hereto as Exhibit H. On November 30, 1985, each cage cashier was retrained at a seminar covering all aspects of their position and duties including the procedures for verifying American Express Travelers Cheques. Copies of the curriculum for the training session and the materials provided to each cashier during the training program is attached hereto as Exhibits I and J. Lastly, full and complete instructions

describing the method of the entry of the serial numbers on the travelers cheques are affixed to the American Express Terminal located in BRC's cashier's cage.

By: _____
Joseph M. Nardi, III
Deputy Attorney General
Attorney for Plaintiff
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

By: _____
Lloyd D. Levenson
Cooper, Perskie, April, Niedelman,
Wagenheim & Weiss
1125 Atlantic Avenue
Atlantic City, New Jersey 08401
Attorney for Respondent
Boardwalk Regency Corporation d/b/a
Caesars Atlantic City

A072487/15

TABLE OF EXHIBITS

Exhibit A	Boardwalk Regency Corporation Shortage/Overage Policy
Exhibit B	American Express Travelers Checques RD 109-555-474 through 479
Exhibit C	Boardwalk Regency Corporation Policies and Procedures for the Acceptance of Traveler's Checks
Exhibit D	Correspondence dated August 12, 1985 from Carol B. Roberts to Ellsworth Gaskill
Exhibit E	American Express Travelers Checques Encashment Assistance Service brochure
Exhibit F	American Express Travelers Checques brochure entitled "It Pays To Watch and Compare"
Exhibit G	American Express Travelers Checques RA 188-042-848 and RA 118-042-850 through 853
Exhibit H	Caesars Atlantic City Memorandum dated September 26, 1986 from Ells Gaskill to All Cage Personnel
Exhibit I	Caesars Atlantic City Memorandum dated November 15, 1985 from Ells Gaskill to Robert Reilert
Exhibit J	BRC Casino Cage Training Session materials dated November 30, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-301
LICENSE NO. 43866-21
OAL DOCKET NO. CCC 5125-88
ORDER NO. 89-9-13

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF TRINA D. BROWN

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 13th day of April 1989, ORDERED that the initial decision is modified as follows:

> to correct the error on line 3 of the second full paragraph on page 5 of the initial decision, which states in part "was entitled." The correct wording should be "was not entitled" (underlined word indicates correction).

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5125-88
AGENCY DKT. NO. 88-EA-301

TRINA D. BROWN,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Trina D. Brown, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 6, 1988 Decided: January 20, 1989

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

STATEMENT OF THE CASE

The petitioner seeks renewal of her casino employee license which permits her to work as a blackjack dealer in a licensed casino. By letter to the Casino Control Commission dated May 24, 1988, the Division of Gaming Enforcement objected to the renewal, based upon its allegation that the petitioner had committed the offense of theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4. These are the issues:

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1. Is the petitioner disqualified from licensure pursuant to section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon her alleged commission of acts which constitute theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Does the petitioner possess the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the act.

3. Has the petitioner, if she has committed an otherwise disqualifying offense, affirmatively established her rehabilitation, pursuant to section 90h of the act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on her renewal application was received by the Casino Control Commission on June 30, 1988. On July 13, 1988, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1988. The hearing was thereafter held as scheduled on December 6, 1988, and the record closed on that date.

FINDINGS OF FACT

There is no dispute concerning the material facts in this matter. The petitioner is a 24-year-old resident of Mays Landing, New Jersey. She provides the sole support for her seven-year-old son. The petitioner is seeking renewal of her casino employee license, which was originally issued by the Casino Control Commission in March 1983.

The petitioner has been employed by the Claridge Casino Hotel as a blackjack dealer since October 16, 1986. She works on a full-time basis, five days per week. A letter from Pit Boss Shelley Horne was admitted into evidence as Exhibit P-2. The letter writer has been a supervisor at the Claridge for seven years and has had the opportunity to observe and supervise the petitioner. The petitioner was described

as displaying a positive and professional attitude toward supervisors and fellow employees and her game knowledge and performance were described as being excellent. On the basis of her positive characteristics, the petitioner has been nominated at the Claridge for recognition as employee of the month (Exhibit P-3).

The petitioner testified that she first was employed as a blackjack dealer by the Tropicana Casino Hotel in April 1983. She earned $3.50 per hour, plus tips. On December 2, 1984, the petitioner applied for unemployment benefits. She disclosed her employment and earnings from the Tropicana and was determined to be eligible for a benefit grant. Her earnings were subtracted as an offset from her grant and the amount of the grant varied, depending on how many days per week she was working.

According to the petitioner's candid testimony, she received unemployment benefits until April 23, 1985. During that entire time, she continued to work at the Tropicana. However, although her work schedule at the Tropicana had increased to three or four days per week, the petitioner informed the Unemployment Benefits Office that she did not have any days during which she worked. On the basis of this false information, her unemployment benefits grant was increased.

The Division of Unemployment and Disability Insurance subsequently discovered its overpayment to the petitioner and it filed a Certificate of Debt in the Superior Court of New Jersey which recorded the petitioner's indebtedness to the State of New Jersey for the repayment of benefits and fines totaling $5,293.75 (Exhibit R-1). The petitioner was charged with theft by deception, contrary to N.J.S.A. 2C:20-4, as a result of her receipt of benefits to which she was not entitled between December 1984 and April 1985 (Exhibit R-3). On July 20, 1987, the petitioner entered a guilty plea to the downgraded charge of theft by deception in the fourth degree. She was sentenced to two years probation, fined $500, and ordered to pay court costs of $25 and a Violent Crimes Compensation Board penalty of $30. In addition, the petitioner was ordered to make restitution in the amount of $4,790.

A letter from Probation Officer Katrina Bond of the Atlantic County Probation Department was admitted into evidence as Exhibit P-4. According to Ms. Bond, the petitioner was directed on August 11, 1987, to report to the Probation Office on the second Tuesday of each month and to pay her fines and restitution in the amount of $50 per week. Probation Officer Bond reports that the petitioner is currently

abiding by the conditions of her probation and she has remained "arrest-free and gainfully employed." It is undisputed that the petitioner has no other record of arrests or convictions.

The petitioner testified credibly concerning the circumstances which led her to collect the unemployment benefits to which she was not entitled. She was a young single parent, and she had just moved out on her own. The petitioner had a number of monthly payments which she was required to make, including payments for housing, utilities, and transportation. Although she was working while she incurred these obligations, she was not earning enough money to pay her bills.

The petitioner was a sincere and believable witness on her own behalf. She emphasized that she has not missed a payment on her restitution obligation and she noted her good work record at the Claridge Casino. The petitioner stated credibly that her receipt of unemployment benefits to which she was not entitled was an isolated incident (see Exhibit P-5). The petitioner's father, Clinton Anderson, and her sister, Michele Stokes, testified on her behalf. It was apparent from their testimony that they respect the petitioner's integrity and sincerity.

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

CONCLUSIONS OF LAW

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

Pursuant to sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate by clear and convincing evidence her good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to sections 86c(1)

and 86g of the act, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the petitioner received unemployment benefits to which she was not entitled during a period extending from December 2, 1984 through April 23, 1985. She received these benefits by failing to report her earnings from employment. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner withheld from the Division of Unemployment and Disability Insurance the important information that she was receiving earnings from employment. Thus, her act of deception resulted in her obtaining benefits to which she was not entitled. Accordingly, I **CONCLUDE** that the petitioner has committed the offense of theft by deception.

On July 20, 1987, the petitioner entered a guilty plea to a downgraded charge of theft by deception in the fourth degree. However, she has admitted receiving unemployment benefits to which she was entitled in an amount in excess of $500. The restitution ordered upon her plea of guilty was $4,235. Since theft of an amount in excess of $500 but less than $75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a), I **CONCLUDE** from the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involving an amount in excess of $500 that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to sections 86c(1) and 86g of the Casino Control Act.

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

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

The petitioner was 20 years old when she received unemployment benefits to which she was not entitled. This occurred between December 1984 and April 1985. The petitioner was and remains the sole support of her seven-year-old child. The earnings which she failed to disclose to the Division of Unemployment and Disability Insurance arose from her employment in the casino industry.

The petitioner did not disclose her earnings because she needed the unemployment benefits to meet her expenses. She has candidly admitted her misconduct and has made regular payments to make restitution of the overpayment of unemployment benefits. Since her sentencing in July 1987, the petitioner has paid $50 weekly to make restitution. She is working successfully in the casino industry as a blackjack dealer. Her supervisors and peers consider her to be an excellent employee. The petitioner is now a mature, responsible woman. The likelihood of her becoming involved in illegal activity is now very remote. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under section 86c(1) of the act, has established her rehabilitation by clear and convincing evidence, within the meaning of section 90h of the act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained her burden of establishing by clear and convincing evidence that she presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act. Therefore, I further **CONCLUDE** that the petitioner's application for renewal of her casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Trina D. Brown for renewal of a casino employee license be **GRANTED**.

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

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

January 20, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

1/20/89
DATE

Witnessing For Me
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 25 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Receipt for paid account dated December 6, 1988
P-2 Letter dated November 29, 1988
P-3 Nomination for Employee of the Month
P-4 Letter from Probation Office dated November 21, 1988
P-5 Petitioner's statement dated November 15, 1988

For the respondent:

R-1 Certificate of Debt
R-2 New Jersey Department of Labor Computer Ledger
R-3 Unemployment Insurance Fraud Report

WITNESSES

For the petitioner:

Trina D. Brown
Clinton Anderson
Michele Stokes

For the respondent:

Trina D. Brown

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-195 and 88-392
APPLICATION NO. 66772-21
REGISTRATION NO. 49167-40
OAL DOCKET NOS. CCC 3460-88 and 4398-88
ORDER NO. 89-14-19

APPLICATION OF RICHARD E. BURNSIDE
FOR A CASINO EMPLOYEE LICENSE,
and

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

Complainant,

v.

RICHARD E. BURNSIDE,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is modified as follows:

> to include in the ALJ's rehabilitation analysis the respondent's July 31, 1987, harrassment convictions. These convictions are indications that the respondent's disqualifying criminal conduct was not an isolated incident.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Richard E. Burnside is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision as modified; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 3460-88
AND CCC 4398-88
AGENCY DKT. NOS. 88-EA-195
AND 88-392
(CONSOLIDATED)

RICHARD E. BURNSIDE,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.
and;
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RICHARD E. BURNSIDE,
Respondent.

Richard E. Burnside, petitioner-respondent, pro se
Joanne Ciancimino, Deputy Attorney General, for respondent-petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: October 28, 1988 Decided: February 28, 1989

New Jersey is an Equal Opportunity Employer

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint and a letter with the Casino Control Commission (Commission) on February 26, 1988 and June 6, 1988 respectively, seeking the revocation of Richard E. Burnside's casino hotel employee registration and objecting to the issuance of a casino employee license to him. The Division alleges that Mr. Burnside's criminal conduct and conviction preclude his continued employment in the casino industry.

PROCEDURAL ASPECTS

Subsequent to its receipt of the Division's complaint and objection letter, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The Commission also ordered that the two matters be consolidated pursuant to N.J.A.C. 1:1-17.1(b). On August 8, 1988, a prehearing conference was held where the issues were settled and the hearing date of October 28, 1988 was established, among other things. The hearing was held on the established date at the Absecon Municipal Court at the conclusion of which, the herein record was considered closed. Extensions were requested and granted for the execution of this initial decision.

ISSUES

The issues to be determined by this tribunal were set forth at the prehearing conference as follows:

1. Whether petitioner-respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19(a)1 which is analogous to N.J.S.A. 2C:35-5?

2. With respect to the application only, whether the applicant may demonstrate his good character, honesty and integrity, pursuant to

N.J.S.A. 5:12-89b(2), which is incorporated by section 90b of the Casino Control Act (Act)?

3. Whether petitioner-respondent may demonstrate his rehabilitation pursuant to sections 90h and/or 91d of the Act?

FINDINGS OF FACT

Based upon the testimony proffered at the hearing together with the documents marked into evidence, I make the following **FINDINGS OF FACT** in this matter:

Richard E. Burnside, who is now 26 years of age, was arrested by officers of the Pleasantville, New Jersey, Police Department when he was nineteen years of age on March 1, 1982. On that occasion, petitioner-respondent was a passenger in a motor vehicle which had struck a utility pole at the intersection of Routes 322 and 9. The police officers investigating the accident found in plain view in the vehicle nine cellophane bags containing vegetation which later tested to be marijuana in a quantity of over 25 grams. In addition, the police officers found a blue cloth bag in the vehicle which contained 47 white tablets and which later proved to be quualudes, a controlled dangerous substance (CDS). Mr. Burnside and the driver of the motor vehicle were arrested and placed under custody by the Pleasantville Police. Subsequent to a complaint having been issued alleging possession with the intent to distribute marijuana over 25 grams and 47 quualudes, the Atlantic County Grand Jury returned a "No Bill" and the complaint was dismissed.

Petitioner-respondent failed to disclose this arrest on his Personal History Disclosure form, however, he did admit to it during a subsequent telephone interview with Division Agent, Richard A. Clark.

Petitioner-respondent was next arrested in San Jose, California on a complaint for disturbing the peace on May 24, 1985. The California charge of disturbing the peace is similar to the New Jersey Code of Criminal Justice, N.J.S.A. 2C:33-2, disorderly conduct. On June 26, 1985, Burnside was found guilty of the charge and was fined $100 with an additional $70 penalty assessment. Petitioner-respondent was 23 years of age when this offense was committed.

Subsequently, on December 18, 1986, the Atlantic County Grand Jury handed up Indictment No. 86-12-2554-B-I alleging in six counts that Burnside and Michael A. DePiano a/k/a Michael Rossman had conspired to commit the crime of theft by extortion in violation of N.J.S.A. 2C:20-5 and contrary to N.J.S.A. 2C:5-2; threatened to commit a crime of violence with a purpose to terrorize one Robert Vanzin contrary to N.J.S.A. 2C:12-3a; threatening to inflict bodily injury upon Vanzin contrary to N.J.S.A. 2C:20-5, among other things.

On July 31, 1987, after five days of trial by jury, Burnside was found guilty of Amended Counts 4 and 5 to Harassment, a petty disorderly offense, N.J.S.A. 2C:33-4. The Honorable Manuel Greenberg, J.S.C., placed Burnside on one year probation, imposed a fine of $500 and assessment of $30 to the Violent Crime Compensation Board (VCCB) for each of two counts.

The downgraded Harassment amended charge was as a consequence of Burnside and DePiano, a/k/a Michael Rossman, attempting to collect money from Vanzin for the sale of one quarter of a pound of cocaine to Vanzin by Burnside. DePiano, who used the professional name, Michael Rossman, was the former light heavyweight boxing champion of the world.

On December 4, 1986, the Atlantic County Grand Jury handed up Indictment No. 86-12-2446-C-IN alleging in four counts that Burnside and Richard Campana possessed CDS; distribution of cocaine, CDS; conspired to distribute CDS; and, possession of CDS with intent to distribute. As a consequence of a plea bargaining agreement, Burnside entered a plea of guilty to count Two of the Indictment and on November 20, 1987 was sentenced to two years probation; serve 180 days in the Atlantic County Jail and $30 to VCCB. In setting forth his reasons for the sentence, Judge Greenberg stated that:

> The sentence is within the parameters of the plea agreement. Given the great harm to society caused by persons in the business of unlawful sale of drugs, it is evidence that in general, cases of this type call for a period of incarceration so as to act as a deterrent against such conduct not only by the particular defendant involved, but also others engaged in it. The amount of drugs here, moreover, was not minute nor was the distribution merely as an accommodation but rather obviously for profit.

> Thus, it is essential that a period of incarceration of some substance be imposed as a condition of probation (P-6).

Petitioner-respondent Burnside's probation with respect to this charge and sentence continues until November 1989.

Mr. Burnside's employment history in the casino industry shows that he was first employed by the Sands Hotel and Casino on August 18, 1983 as a bus person. Burnside remained at the Sands until November 10, 1984 at which time he abandoned his employment position. Thereafter, he was hired by Caesars Boardwalk Regency Hotel/Casino on November 20, 1985 as a bus person. Burnside was terminated from the employment position because he was unable to perform the job satisfactorily during the probationary period. The employment records at Caesars revealed that Burnside had a "write-up" in his personnel file. The write-up demonstrated that Burnside was loitering in an off limits stairwell of the casino on November 20, 1985.

Thereafter, on September 8, 1986, Burnside was employed at Bally's Grand Hotel and Casino as a food server in its Greenery Restaurant. Bally's records show that although Burnside was hired, he did not appear on the appointed commencement date and, therefore, he was terminated. On October 17, 1986, Burnside was employed by the Trump Plaza Hotel/Casino as an assistant service person. Burnside remained at the Trump Plaza until September 25, 1987 at which time he quit the job without good cause. On October 12, 1987, he was employed at the Trump Castle Hotel and Casino as a food server and voluntarily resigned from the position on November 20, 1987.

Mr. Burnside has been employed by the Sands in its Rossi's Restaurant since, at least, June 1988 as a food server. While in this position Burnside has received complements from patrons about his demeanor and attentiveness.

Petitioner-respondent Burnside did not testify on his own behalf.

DISCUSSION AND CONCLUSIONS

Section 16(8) of the Act clearly establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129 of the Act provides for the revocation of or other sanction against a license or registration held by a person "...for the conviction of any criminal offense....or for the commission of any other offense or violation of this Act which would disqualify such person from holding his license or registration." The Division has clearly demonstrated that Mr. Burnside was convicted of an offense enumerated under former section 86c(3) of the Act; possession of a CDS with intent to distribute, pursuant to N.J.S.A. 24:21-19a(1). There, the Act provided that the Commission shall deny a casino license to any applicant who is disqualified on the basis of ... the conviction of the applicant ... of any offense in any jurisdiction which would be ... a violation of ... law. The record clearly shows that Burnside entered a plea of guilty to the Second Count of the Atlantic County Grand Jury Indictment No. 86-12-2446-C-IN, which states that:

> On or about the 18th day of April, 1986, in the City of Ventnor, County of Atlantic and within the jurisdiction of this Court, the said Richard Campana and Richard Burnside did unlawfully and knowingly distribute to Inv. James Pullan a controlled dangerous substance, to wit: Cocaine, contrary to the provisions of N.J.S. 24:21-19a(1), and against the peace of this State, the government and dignity of the same (P-6).

As a consequence of Burnside's entry of a guilty plea, he was placed on probation for a period of two years, incarcerated for a term of 180 days and assessed $30 for Violent Crimes Compensation Board.

I **CONCLUDE**, therefore, that the Division has established, by a preponderance of the reliable and credible evidence, that petitioner-respondent's acts constitute a violation of N.J.S.A. 24:21-19a(1) (now, N.J.S.A. 2C:35-5), a disqualifying offense for licensure, pursuant to former section 86c(3) of the Act (as amended by L. 1987, c. 354 § 10, eff. January 4, 1988, now N.J.S.A. 5:12-86c(1)).

Pursuant to Section 90b of the Act, section 89b(2) is incorporated therein and provides that:

> Each applicant for a casino...employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. ....

In support of his burden, Burnside produced his probation officer and a recent employment supervisor to testify on his behalf. David Berger, Atlantic County Probation officer asserted, among other things, that Burnside had been on probation since July 31, 1987 when he was placed as a consequence of the N.J.S.A. 2C:33-4 Harassment charge. Mr. Burnside met all of his probationary obligations including reporting to Berger in a timely manner and maintaining employment. Berger opined that Burnside had benefited "somewhat" from his probation experience. As a consequence of Berger's observation of Burnside at the herein hearing, Berger's assessment of Burnside's attitude was "not very good," based upon Burnside's performance at the hearing (Tr. p. 43). Berger hoped that, as a result of his probation experience, Burnside's prognosis "would be good." (Tr. p. 44).

Mr. Kenneth Correll, steward shift supervisor at the Sands, asserted, among other things, that he had received a number of complements about Burnside's work from patrons. Mr. Correll had known Burnside from June 1988 until the present and was made aware of Burnside's criminal record when Burnside requested that Correll testify on his behalf.

Petitioner-respondent Burnside's criminal acts do not indicate the qualities of good character, honesty and integrity. Notwithstanding that the indictable offenses of terrorists threats (N.J.S.A. 2C:12-3a), theft by extortion (N.J.S.A. 2C:20-5) and conspiracy to commit theft by extortion (N.J.S.A. 2C:5-2) were downgraded to a charge and finding of guilt to the charge of harassment (N.J.S.A. 2C:33-4), such conduct does not indicate the characteristics of good character, honesty or integrity. Given the facts, as illustrated by Senior Investigator Pullen in Exhibit P-7, it is apparent that Burnside's actual character and attributes are in opposition to the characteristics of good character, honesty and integrity. *In the Matter of the*

Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979). This, coupled with his subsequent conviction of the possession with intent to distribute CDS (N.J.S.A. 24:21-19a(1)) does not bespeak the qualities requisite for licensure.

Accordingly, I **CONCLUDE** that petitioner-respondent has failed to carry his burden to demonstrate, by clear and convincing evidence, that he possesses good character, honesty and integrity for licensure as a casino employee. *In re Boardwalk Regency Casino License Application*, 180 N.J. Super., 324 (App. Div. 1981).

An applicant, licensee or registrant faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h and/or 91d. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

In consideration of petitioner-respondent's claim of rehabilitation, the following has been found in this record:

First, petitioner-respondent presently holds a casino hotel employee registration No. 49167-40 and that he is applying for a casino employee license as a blackjack dealer under DGE No. 66772-21. In his past and present employment in the casino industry, he has worked in the hotel food services and has had incidental contact with casino patrons.

Second, petitioner-respondent Burnside committed the offense of the possession of a CDS with the intent to distribute, in contravention of N.J.S.A. 24:21-19a(1) and entered a plea of guilty to the offense before the Honorable Manual Greenberg, J.S.C. This offense is serious and by its very nature, was listed as an automatic disqualifying offense to hold a casino employee license under Section 86c(3) of the former Act.

Third, the underlying circumstances which lead to Burnside's arrest, indictment, entry of a guilty plea and finding of guilt demonstrate the seriousness of the misconduct. It has been established on this record that Burnside was the subject of two Indictments handed up by the Atlantic County Grand Jury within a period of 14 days in December 1986. Both Indictments were related to illegal drugs or the distribution thereof.

Fourth, the disqualifying offense occurred on or about April 18, 1986 in the City of Ventnor, Atlantic County. Burnside was not employed within the casino industry when the arrest occurred.

Fifth, the misconduct occurred when Burnside was 24 years of age. There is no indication that respondent's misconduct was due to immaturity.

Sixth, although he had been charged, there is no finding that petitioner-respondent had more than one conviction for violation of CDS laws of this State.

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

Eighth, Burnside's rehabilitation efforts are minimal. He is currently serving his probation, which will not expire until November 1989. His probation officer qualifies Burnside's prognosis as "good" but that his attitude is "not very good." Considering the totality of the evidence, petitioner-respondent's rehabilitative efforts do not outweigh the seriousness of his misconduct.

I **CONCLUDE**, therefore, that petitioner-respondent has not affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h or 91d.

For the reasons expressed in this decision, it is clear that petitioner-respondent's misconduct constitutes sufficient grounds for the revocation of his casino employee registration. It is further clear that he has clearly committed a disqualifying offense under Section 86c(3) and that his application for a casino employee license should be denied.

ORDER

Accordingly, it is hereby **ORDERED** that the complaint issued by the Division against Richard E. Burnside is **GRANTED** and that the casino hotel employee registration No. 49167-40 be **REVOKED**.

It is further **ORDERED** that the application of Richard E. Burnside for a casino employee license be and is hereby **DENIED**.

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

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

28 February 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

3/3/89
DATE

Dionanne Fiore
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 3 1989
DATE

Jayne LaVecchia/KS
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner-Respondent:

David Berger
Kenneth Correll

For the Respondent-Petitioner:

Richard A. Clark
James H. Pullan

EXHIBIT LIST

For the Petitioner-Respondent:

R-1 Letter from Patron of Sands

For the Respondent-Petitioner:

P-1 Investigation and Arrest Report from Pleasantville Police
P-2 Complaint of Pleasantville Municipal Court
P-3 Report from Atlantic County Prosecutors Office
P-4 Indictment Number 86-12-2554
P-5 Judgment for Indictment Number 86-12-2554
P-6 Indictment Number 86-12-2446
P-7 Investigator Pullan's Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-130
APPLICATION NO. 70086-21
OAL DOCKET NO. CCC 8451-88
ORDER NO. 89-20-20

APPLICATION OF JAMES C. CALLAN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by the Division; and a reply to exceptions having been filed by the applicant; and the Commission having considered the entire record of these proceedings except the Division's exceptions at its public meeting of May 17, 1989,

IT IS on this 31st day of May 1989, ORDERED that the initial decision is modified as follows:

1. As the ALJ concluded, the applicant's conduct in collecting $2,520 in unemployment compensation to which he was not entitled constituted the offense of theft by deception in violation of N.J.S.A. 2C:20-4, an offense listed in section 86(c)(1). Because this offense was committed more than ten years prior to the date on which the applicant filed his application for licensure, the burden is on the applicant to demonstrate that it should not result in his disqualification. N.J.S.A. 5:12-86(c)(2); Application of Jackie Edwards, 89-EA-92 (Commission order March 2, 1989).

   In determining whether such an offense is disqualifying the factors to be considered are the rehabilitation criteria listed in N.J.S.A. 5:12-90(h) and 91(d). Application of Paul Goldberg for a Casino Employee License, Docket No. 87-EA-5 (Commission order

June 11, 1985) and State v. Ronald J. Jones, Docket No. 86-15 (Commission order July 8, 1987). Considering the rehabilitation factors present in this case, including that the applicant's offense occurred in 1975; that his debt to the Division of Unemployment and Disability Insurance has been discharged; that he has been gainfully employed and has led a law-abiding existence since 1981; that the administrative law judge was impressed by his demeanor and credibility and concluded that the applicant was unlikely to repeat his criminal behavior; and that three individuals have attested to his current good character, the applicant has affirmatively demonstrated that his offense should not result in disqualification.

2. To note that the correct dates for the period during which the applicant collected unemployment benefits are September 1, 1975, through December 15, 1975, as indicated on pages 1 and 6 of the initial decision and not September 1, 1985, through December 16, 1985, as indicated on page 2; and

3. To include the fact that $2,160 of the $2,520 owed to the Division of Unemployment and Disability Insurance was repaid from subsequent benefits due to the applicant and that the entire amount of this debt was later discharged in bankruptcy.

IT IS FURTHER ORDERED that the application of James C. Callan is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8451-88
AGENCY DKT. NO. 89-EA-130

JAMES C. CALLAN,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

James C. Callan, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: March 21, 1989 Decided: April 11, 1989

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that the petitioner, James C. Callan, is statutorily disqualified from holding a casino employee license within the meaning of section 86c(1) of the Casino Control Act (Act) by virtue of his improper collection of Unemployment Compensation benefits between September 1, 1975 and December 15, 1975, in the amount of $2,520, contrary to N.J.S.A. 2C:20-4 theft, despite the fact that such acts were not prosecuted within the meaning of section 86g of the Act. The Division also alleges that the petitioner does not possess the requisite good character, honesty and integrity for casino licensure

pursuant to section 89b(2) of the Act as incorporated within section 90b. The petitioner asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed an objection letter with the Casino Control Commission (Commission) on September 26, 1988. The petitioner requested a hearing on November 8, 1988. On November 14, 1988, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before the Honorable Edgar Holmes on December 27, 1988, and the matter was scheduled for hearing before the Honorable Stephen W. Thompson on March 21, 1989, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was heard and the record closed on March 21, 1989.

ISSUES

A. Whether petitioner committed the disqualifying offense of theft by deception, contrary to N.J.S.A. 2C:20-4 within the meaning of section 86c(1), even though such conduct was not prosecuted under the criminal laws of New Jersey, within the meaning of section 86g.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts essential to the resolution of this matter are undisputed.

A New Jersey Department of Labor and Industry certificate of debt was entered against the petitioner as a result of the petitioner improperly collecting Unemployment Compensation benefits between September 1, 1985 and December 16, 1985. The petitioner argues that the dates are incorrect; however, he

acknowledges that he improperly collected benefits while he was self-employed as an insurance and real estate salesman and being paid a weekly draw against his commission. The Division contends that the improper receiving of Unemployment Compensation benefits is analogous to theft by deception in violation of N.J.S.A. 2C:20-4.

On September 9, 1981, the petitioner was arrested in South Carolina for forgery in violation of South Carolina statute §16-13-10, which is analogous to N.J.S.A. 2C:21-1. The petitioner had taken an individual's checkbook and had written four checks totalling $1,050. The petitioner was convicted of the offense on January 19, 1982, and sentenced to four years in prison. The petitioner served less than six months in jail. In the state of New Jersey, forgery of a check or other like instrument is a fourth-degree offense. State v. Ott, 181 N.J. Super. 559 (Law Div. 1981). It is undisputed that the forgery conviction in South Carolina does not automatically disqualify petitioner from casino licensure. In addition, the Division has failed to establish an offense in violation of N.J.S.A. 2C:20-3 which would be a statutory disqualifier under section 86c(1) of the Act.

The petitioner acknowledged his misconduct but emphasized that his criminal conduct occurred many years ago. It is undisputed that the petitioner has not been involved with the criminal justice system since early 1982.

The above is documented, believable and it is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which would be under New Jersey law at the time of application be a violation of any of the provisions in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. Section 86g provides that the Commission shall deny a casino license to any applicant who is disqualified "by any act or acts which would constitute any offense under subsection c . . . even if such conduct has not or may not be prosecuted under the criminal laws of this State."

In the instant matter, the documentary evidence and the admissions made by petitioner establish, by a preponderance of the credible evidence, that Mr. Callan

committed an act comparable to theft by deception by collecting unemployment benefits while he was employed as insurance and real estate salesman between September 1, 1975 and December 15, 1975. Therefore, I **CONCLUDE** that petitioner is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act as incorporated within section 86g.

(B) N.J.S.A. 5:12-89b(2) as incorporated within section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Callan is required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises an objection to licensure under section 89b(2) of the Act, it is incumbent upon the applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 297.

The Commission has held that the disqualification criteria found in section 86b cannot be segregated from an applicant's burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL Dkt. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) Final Decision at 8.

I have had the opportunity to observe the demeanor and credibility of the petitioner. After weighing and assessing the testimony presented, I am satisfied that Mr. Callan should not be precluded from casino licensure based upon his alleged lack of good character, honesty and integrity. The fact that the disqualifying offense occurred in 1975 and the fact that petitioner's last criminal

conduct occurred in 1981 demonstrate that over a period of the last eight years, petitioner has led a law-abiding existence. I am persuaded, based upon petitioner's testimony, that the passage of time and change in attitude give petitioner the requisite good character, honesty and integrity for casino licensure.

Therefore, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed employee in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation.

N.J.S.A. 5:12-90h sets forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

2) The nature and seriousness of the offense or conduct;

3) The circumstances under which the offense or conduct occurred;

4) The date of the offense or conduct;

5) The age of the applicant when the offense or conduct was committed;

6) Whether the offense or conduct was an isolated or repeated incident;

7) Any social condition which may have contributed to the offense or conduct;

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

First, Mr. Callan is an applicant for a casino employee license as a craps dealer. As such, he will have substantial contact with patrons of casinos.

Second, the Division has established that petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, pursuant to section 86g of the Act. Theft by deception is a statutory disqualifier. Given the circumstances, this was a serious offense.

Third, the petitioner acknowledged his misconduct. Under the facts of this case, it is unlikely that the petitioner will repeat his criminal behavior.

Fourth, petitioner's criminal behavior between September 1975 and December 1975 appears to be repeated in 1981.

Fifth, the petitioner committed the disqualifying offense at age 45. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved his commission of offenses in 1975 and 1981. There is no indicia of any other criminal behavior subsequent to the events of 1981.

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

Eighth, the petitioner has demonstrated his rehabilitation by clear and convincing evidence. The fact that Mr. Callan has led a law-abiding existence since 1981 must be given substantial weight when assessing rehabilitation.

After considering all of the facts listed in N.J.S.A. 5:12-90h, including the fact that petitioner has led a law-abiding existence since 1981, and after assessing the credibility and demeanor of Mr. Callan, I am persuaded that petitioner has met his statutory burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the petitioner has affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER AND DISPOSITION

It is **ORDERED** that the application of James Callan for a casino employee license (DGE 70086-21) be **GRANTED**.

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

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

DATE — **STEPHEN W. THOMPSON,** ALJ

Receipt Acknowledged:

DATE — **CASINO CONTROL COMMISSION**

Mailed to Parties:

APR 12 1989

DATE — **OFFICE OF ADMINISTRATIVE LAW**

ml

LIST OF WITNESSES

For the petitioner:

James Callan

For the respondent:

James Callan

RECEIVED

MAY 10 1989

CASINO CONTROL COMMISSION
LEGAL DIVISION

DOCUMENTS IN EVIDENCE

For the petitioner:

P-1	Letter from Fitzgerald F. Craige, attorney at law, dated January 4, 1989
P-2	Letter from John McGovern, Manager, 500 Bay Condominium, dated January 25, 1989
P-3	Letter from Laurel Mowbray, undated

For the respondent:

R-1	Uncertified judgment of conviction, State of South Carolina, County of Orangeburg, January term 1982
R-2	Statement of charges
R-3	Determination and demand for refund of unemployment benefits
R-4	Claimant's benefit payment and employment record, March 4, 1977
R-5	Claimant ledger, dated March 18, 1977
R-6	Letter from Bertram Saxe, attorney at law
R-7	Memorandum, dated July 9, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-390; 89-EA-149
REGISTRATION NO. 68506-40
APPLICATION NO. 78518-21
OAL DOCKET NO. CCC 8274-88; CCC5187-88
ORDER NO. 89-25-14

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

Complainant,

v.

NICHOLAS J. CELLI,

Respondent.

AND

APPLICATION OF NICHOLAS J. CELLI FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 21, 1989,

IT IS on this 30th day of June 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 5187-88
AND CCC 8274-88
(Consolidated)
AGENCY DKT. NOS. 88-390
AND 89-EA-149

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
NICHOLAS J. CELLI,
Respondent.

Charles Kimmel, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Jerry H. Steiner, Esq., for respondent

Record Closed: April 18, 1989 Decided: May 17, 1989

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

STATEMENT OF THE CASE

This contested case concerns two consolidated matters. The first is the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on June 8, 1988, seeking revocation of the respondent's casino hotel employee registration. The second matter concerns the respondent's application for licensure as a casino employee, which would permit his employment in a licensed casino as a craps dealer. By letter report to the Casino Control Commission dated October 4, 1988, the Division has objected to the respondent's application for licensure.

The Division alleges that the respondent has been convicted of sexual assault (a crime of the second degree), contrary to N.J.S.A. 2C:14-2(b), which is a disqualifying offense listed under section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). As amended, the issues to be resolved in this consolidated proceeding are as follows:

1. Has the respondent been convicted of sexual assault, contrary to N.J.S.A. 2C:14-2(b), which would be a disqualifier from licensure and from registration, pursuant to sections 86c(1), 90e and 91b of the Casino Control Act.

2. Has the respondent, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.

3. Has the respondent established by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

The respondent's request for a hearing on the Division's complaint was received by the Casino Control Commission on June 24, 1988. On July 15, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1988.

As noted above, the Division objected to the respondent's application for licensure as a casino employee by letter to the Commission dated October 4, 1988. That matter was also transmitted to the Office of Administrative Law for determination as a contested case on November 14, 1988. An additional prehearing conference was held on January 19, 1989, and the joint application of the parties for consolidation was granted. The hearing was held as scheduled on March 28, 1989. I subsequently determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on April 18, 1989.

FINDINGS OF FACT

The material facts are essentially undisputed. The respondent is a 22-year-old resident of Linwood, New Jersey, and he holds casino hotel employee registration no. 68506-40. He has also successfully completed a 240 hour course in craps dealing

(Exhibit R-3). The respondent is presently employed as a skilled laborer for Tomasulo Builders.

Sergeant Steven Hadley of the Atlantic County Prosecutor's Office testified on behalf of the Division of Gaming Enforcement. On September 22, 1985, he was a sergeant with the Egg Harbor Police Department. Sergeant Hadley testified that he was assigned to investigate an alleged sexual assault. He went to the scene and spoke with the three-year-old victim, who kept saying, "he hurt me." At the hospital, the child was examined by a physician and was found to have a tear in her vaginal area and some bleeding. There also was an abrasion of the hymen and the physician reported some signs of force.

Sergeant Hadley testified that he interviewed a baby-sitter and her companion at the scene of the incident and they both identified the respondent as the perpetrator. The assault had been reported at about 10:30 p.m. and Sergeant Hadley picked up the respondent about five hours later. Sergeant Hadley could tell that the respondent had been drinking and the respondent said something to the affect that he had been "sleeping it off for the last five hours." The respondent appeared to know why he was being arrested and he was scared. He told the sergeant that he had talked it over with his girlfriend and had decided to turn himself in.

Sergeant Hadley acknowledged that he had seen the report of the examining physician which had indicated that the child was not in acute distress. Although there had been some penetration of the vagina, it was not deep and the hymen was not broken. The sexual contact may possibly have been with a finger (Exhibit R-1).

Sergeant Hadley testified that the respondent's blood alcohol concentration was measured at .034 percent following his arrest. He acknowledged that the concentration may have been about .14 percent at the time of the incident (see Exhibit R-6). The respondent told Sergeant Hadley that he had consumed half a bottle of whiskey and a couple of eight packs of beer. It was the sergeant's impression that the this alcohol had been consumed prior to the incident. The respondent told the sergeant that he had been upstairs in the home where the incident occurred and had vomited. The respondent related that he had been half asleep and he really did not know what he had done. According to Sergeant Hadley, the respondent said that he thought he had been in bed with his girlfriend and when the baby screamed, it brought him out of it. The respondent also told the

sergeant that he did not think that he had removed the baby's diaper. Finally, Sergeant Hadley noted that the respondent had been 18 years old at the time of the incident and the sergeant found no prior record for the respondent. The sergeant also found no prior incident of sexual perversion or deviation.

The respondent testified on his own behalf. He stated that he had been drinking alcoholic beverages since he was about 12 years old. He had also used all kinds of drugs. Two days before the incident in September 1985, the respondent had used LSD, and on the day of the incident, he had consumed large amounts of whiskey and beer.

The respondent testified that he had no intention to touch the child. Having been drinking most of the day, the respondent was sick from it. He had also worked at a construction job and was tired. The respondent stated that he had been on the front porch of the house while his friend and his friend's girlfriend were in the living room. The respondent then went up to the bathroom on the second floor. He lay on the floor in the hallway for a while, but the light there made him feel sicker. The respondent then went into a dark bedroom and he lay down on a big queen size bed. The respondent testified credibly that he has never had any desire for sexual activity with children and he believes that he had no intent to have contact with the little girl.

Following his arrest, the respondent was in jail for 12 days, at which time he was released on bail. On October 10, 1985, the respondent was indicted by the grand jury in Atlantic County for aggravated sexual assault contrary to N.J.S.A. 2C:14-2a(1), sexual assault contrary to N.J.S.A. 2C:14-2b, endangering the welfare of a child contrary to N.J.S.A. 2C:24-4(a), and theft by unlawful taking contrary to N.J.S.A. 2C:20-3 (Exhibit P-1). On May 1, 1986, the respondent retracted a plea of not guilty to the indictment and entered a plea of guilty to the count of the indictment charging him with sexual assault contrary to N.J.S.A. 2C:14-2b. The remaining counts of the indictment were dismissed and the respondent was sentenced to Yardville for an indeterminate term not to exceed four years, with credit given for the 12 days served.

Prior to his incarceration, the respondent successfully completed a 35-day in-patient treatment program for substance abuse at the Seabrook House. From December 1985 until April 1986, the respondent participated in out-patient

treatment in Atlantic City. He also attended Alcoholics Anonymous at least once a week from December 1985 until his incarceration in July 1986 (Exhibit R-5).

The respondent was incarcerated for 11 months and was released on June 30, 1987. Except for one minor rule infraction, the respondent had no trouble while at the Youth Correction and Reception Center in Yardville. He received his GED after six months of schooling at Yardville and the respondent also received basic machine shop training. It was the respondent's testimony that he attended alcohol rehabilitation and behavior modification classes while in jail.

The respondent was released on parole on June 30, 1987, and as a condition of his release, he has been attending Alcoholics Anonymous meetings once a week. He has had no criminal activity since the incident in September 1985. The respondent also noted that he paid for all of the child's medical expenses.

Parole Officer Herman A. Rinaldi testified at the hearing that he is handling the respondent's parole case. The respondent's urine is monitored monthly and the respondent has remained drug-free. According to Mr. Rinaldi, the respondent has fully cooperated and has been honest. It was Mr. Rinaldi's testimony that he would rate the respondent rather high on a ten point scale for rehabilitation. He would give the respondent a nine out of ten rather than a ten only because the respondent candidly has acknowledged that he does have a beer once in a while. Mr. Rinaldi does not consider this a serious problem, given all of the respondent's other progress.

Mr. Rinaldi testified that a casino career would be extremely beneficial to the respondent. Not only would it be a good income, it would be something for the respondent to look forward to everyday. In view of the respondent's progress on parole, Mr. Rinaldi does not think that the respondent would be susceptible to drug trafficking as a casino employee. Mr. Rinaldi also noted that while the respondent does not really remember the details of the incident, he feels remorse and embarrassment about it. Two letters from the Atlantic Mental Health Center concerning the respondent's seven sessions at the center between November 1987 and September 1988 were admitted into evidence as Exhibits R-8 and R-9. Parole Officer Rinaldi's report concerning the respondent's progress on parole was admitted into evidence as Exhibit R-10.

The final witness for the respondent was Anne McFadden, a certified alcoholism counselor for eight years. She is director of the Intoxicated Driver Resource Center for Cape May County and is also a drug counselor. Ms. McFadden met with the respondent for nearly two hours and discussed his drug and alcohol abuse history , as well as the incident of September 1985. Her report was admitted into evidence as Exhibit R-11.

Ms. McFadden testified that she felt the respondent was no longer addicted to drugs or alcohol. At the time of the incident in September 1985, the respondent was in a state of "blackout", a serious drug and alcohol abuse situation. That is the reason why the respondent cannot remember the event. She feels that the respondent has been honest with her and that he has been successful in his drug and alcohol rehabilitation. Emphasizing his integrity, Ms. McFadden noted that the respondent is still attending Alcoholics Anonymous.

Ms. McFadden testified sincerely that she knows what a blackout is from personal experience, as she is a recovering alcoholic. She stated that she would not be able to drink a beer or two. However, some people are able to have a beer or two at some point after going through an alcohol abuse period such as the respondent because they are alcohol abusers, rather than alcoholics. Ms. McFadden does not recommend that a person have a beer or two on weekends, but some former alcohol abusers such as the respondent who don't have the disease of alcoholism are able to do that.

Finally, a psychological evaluation of the respondent dated November 27, 1985, was admitted into evidence as Exhibit R-4, and a psychiatric evaluation dated July 16, 1986 was admitted into evidence as Exhibit R-5. The former evaluation recommended the in-patient and out-patient treatments which the respondent subsequently received. The latter report found no sexual problems or tendencies to act out with small children. Rather, the respondent's problem was his substance abuse. Dr. Teitelman concluded that the incident of September 21, 1985 was unlikely to reoccur and that it was unlikely that the respondent would commit another offense. The last document admitted into evidence was a letter from Hazel A. Mueller (Exhibit R-12). Ms. Mueller has known the respondent for more than eight years and she is aware of his legal problems. She feels that the respondent has worked very hard to put his past behind him and to better his future. According to Ms. Mueller, the respondent is a person of good character, honesty and integrity, and he deserves a chance to succeed.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2) and 90b of the act, an applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(1), the Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure.

Participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the act, the Commission may revoke the registration of any registrant who is disqualified on the basis of his conviction of any offense which is specifically listed under section 86c of the act.

It is undisputed that the respondent was convicted upon his plea of guilty on May 1, 1986, of one count of sexual assault in the second degree, contrary to N.J.S.A. 2C:14-2b. This is an offense specifically identified as a disqualifier under section 86c (1) of the act. Therefore, I **CONCLUDE** that the respondent is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his conviction of a disqualifying offense.

Section 91d of the act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his conviction of an offense identified in the act as disqualification criteria, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the respondent shall not be denied a casino employee license on the basis of his otherwise disqualifying conviction, provided that he has affirmatively

demonstrated his rehabilitation pursuant to section 90h of the act. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h (the language of section 91d is almost identical) shall be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

The respondent is now 22 years old. His conviction resulted from an isolated instance of criminal activity which occurred in September 1985, when the respondent was 18 years old. The respondent has no other record of arrests or convictions.

The crime to which the respondent pled guilty was sexual assault in the second degree, contrary to N.J.S.A. 2C:14-2b. The respondent touched and caused injury to the intimate parts of a three-year-old girl. Such conduct readily engenders revulsion. The respondent is appropriately embarrassed and remorseful concerning his conduct. Most significantly, the credible evidence in the record convincingly establishes that the respondent's conduct was not the result of any pattern of sexual perversion or sexual maladjustment. Rather, the respondent's offense resulted from pathological abuse of drugs and alcohol.

The respondent began heavy use of drug and alcohol as an adolescent. All manner of drugs were abused, including hallucinogens. At the time of his crime,

the respondent had been drinking very heavily and may well also have been under the influence of LSD. As a result, the respondent probably had a diminished capacity and he certainly remembers little concerning the incident.

The respondent has successfully undergone both in-patient and out-patient rehabilitative treatment for his drug and alcohol abuse. He was incarcerated for nearly a year and, while in prison, the respondent completed his high school requirements and obtained a GED. The respondent also received machine shop training. While in prison the respondent attended alcohol rehabilitation and behavior modification classes. Following his parole, the respondent has faithfully attended Alcoholics Anonymous meetings and has attended sessions at the Atlantic Mental Health Center. It was the expert testimony of a certified alcoholism counselor that the respondent has been successful in his drug and alcohol rehabilitation. She and his parole office both agree that the respondent is likely to succeed in the casino industry.

The respondent has in no way attempted to minimize the seriousness of his criminal offense. He has shown that it was an isolated incident resulting from his prior drug and alcohol abuse. The respondent has accepted the desirability of rehabilitative efforts and has pursued rehabilitation earnestly. The credible evidence in the record provides no reasonable basis to believe that any further criminal conduct would be at all likely to occur. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has been convicted of a disqualifying offense under section 86c(1) of the act, has established his rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91d of the act. I also **CONCLUDE** on the basis of the credible evidence presented in this matter that the respondent has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Nicholas J. Celli be **DISMISSED**. It is further **ORDERED** that the application of Nicholas J. Celli for a casino employee license permitting him to work in a licensed casino as a craps dealer be **GRANTED**.

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

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

May 17, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

5/19/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

May 22, 1989
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Indictment and Judgment of Conviction

P-2 Not in evidence

For the respondent:

R-1 New Jersey State Police Bio-Chemical Analysis Questionnaire

R-2 Certification of payment dated February 6, 1989, with receipt

R-3 Statement of successful completion of craps course

R-4 Clinical Psychological Evaluation dated November 27, 1985

R-5 Psychiatric evaluation dated July 16, 1986

R-6 Blood alcohol concentration analysis letter dated April 3, 1986

R-7 Youth Correction and Reception Center Psychological Report dated December 10, 1986

R-8 Atlantic Mental Health Center report dated September 20, 1988

R-9 Atlantic Mental Health Center report dated November 8, 1988

R-10 Letter from Parole Officer Rinaldi dated September 15, 1988

R-11 Evaluation of certified alcoholism counselor McFadden dated February 7, 1989

R-12 Letter from Hazel A. Mueller dated November 19, 1988

WITNESSES

For the petitioner:

Steven Hadley

For the respondent:

Nicholas J. Celli
Herman A. Rinaldi
Anne McFadden

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-274
APPLICATION NO. 69061-22
REGISTRATION NO. 75577-40
OAL DOCKET NO. CCC 7104-88
ORDER NO. 89-14-16

APPLICATION OF JOSEPH D. COCUZZA

FOR A CASINO EMPLOYEE LICENSE

AMENDED ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of April 5, 1989,

IT IS on this 30th day of June 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent's petition to withdraw his application is granted subject to the following conditions:

1. The petitioner will not file a new application for licensure prior to April 6, 1990;

2. The petitioner may immediately apply to the Commission to be registered as a casino hotel employee; and

3. The matter is withdrawn without prejudice to institute revocation proceedings in the Division's discretion at a later time if the petitioner should subsequently obtain a casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
WITHDRAWAL
OAL DKT. NO. CCC 7104-88
AGENCY DKT. NO. 88-EA-274

JOSEPH D. COCUZZA,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Joseph D. Cocuzza, the petitioner, pro se

Charles F. Kimmel, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: February 23, 1989 Decided: February 28, 1989

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

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

PROCEDURAL HISTORY

On September 30, 1986, the petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as an alcoholic beverage employee in the casino industry. By letter to the Commission, dated May 18, 1988, the Division objected to the petitioner's application for licensure as an alcoholic beverage employee, asserting that the petitioner had been convicted of numerous offenses none of which are specifically enumerated by N.J.S.A. 5:12-86c to automatically disqualify him from licensure as a casino employee. Based upon these numerous convictions, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on June 9, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated September 22, 1988, which was received by the Commission on September 26, 1988, the petitioner requested a hearing. On September 26, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on September 28, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before Administrative Law Judge Jeff S. Masin on December 22, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

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

A hearing commenced on February 23, 1988, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record closed.

MOTION TO WITHDRAW

At the hearing, the petitioner requested to withdraw his application for licensure. The basis of his request is that on January 4, 1988, section 7 of the Casino Control Act, N.J.S.A. 5:12-7, was amended to no longer require alcoholic beverage employees to be licensed by the Commission. Section 8 of the Act, N.J.S.A. 5:12-8, now only requires that alcoholic beverage employees be registered with the Commission as casino hotel employees. The Assembly Independent and Regional Authorities Committee Statement to Assembly Bill No. 3431, P.L. 1987, c. 353, provides in pertinent part:

> Currently, section 7 of the act requires any person employed in the conduct of casino gaming or whose duties require or authorize access to the casino to be licensed at a minimum as a casino employee. As a result, many persons such as bartenders, waitresses, secretaries and janitorial personnel and other persons whose duties are performed on the casino floor but whose duties are unrelated to gaming activity are required to be licensed as "casino employees."
>
> This bill amends section 7 to limit the requirement for licensure as a "casino employee" to those employees whose duties require or authorize access to "restricted casino areas" or whose duties are directly involved in the conduct of casino gaming.
>
> The committee adopted amendments to the bill proposed by the sponsor to require licensure as a "casino employee" for those categories of employees specified in the bill and for any other persons whose duties require or authorize access to "restricted casino areas." These amendments would include within the definition of "casino employee" appropriate maintenance personnel, waiters, waitresses and secretaries.
>
> Section 8 of the act sets forth the definition of "casino hotel employee." This bill amends section 8 to specifically categorize as casino hotel employees those persons whose employment duties or services do not involve the conduct of gaming or do not require or authorize access to "restricted casino areas." The committee adopted amendments to the bill proposed by the sponsor to make the definition of "casino hotel employee" applicable to persons whose employment services or duties are involved in the conduct of the business of an approved hotel but who are not included in the definition of "casino key employee" or "casino employee."
>
> The amendments adopted by the committee do not change the current requirement that casino hotel employees be registered with the Casino Control Commission rather than be licensed by the commission.

The petitioner only wants to be a bar porter at a casino. He presently has no desire to apply for any position which now requires casino licensure. On September 30, 1986, when he initially applied to be a bar porter, he was required to be licensed; however, since that time, the law has been changed, and he is no longer required to be licensed. He need only be registered as a casino hotel employee.

Pursuant to N.J.A.C. 19:41-8.6, the Division consents to the withdrawl of the petitioner's application on the following conditions:

1. The petitioner will not file a new application for licensure within one-year of the Commission's acceptance of this withdrawal;

2. The petitioner may immediately apply to the Commission to be registered as a casino hotel employee;

3. The matter is withdrawn without prejudice to instutute revocation proceedings in the Division's discretion at a later time if the petitioner should subsequently obtain a casino hotel employee registration.

The petitioner, after being informed by me as to the effect of these conditions, knowingly, intelligenly, freely, and voluntarily accepted these conditions and requested permission to withdrawn his application.

Extraordinary cicrumstances having been shown, and since the case is now moot as the petitioner no longer is required to obtain a casino employee license in order to pursue his chosen occupation in the industry, pursuant to N.J.A.C. 1:1-19.2, the withdrawal is granted. Therefore, I **ORDER** that Clerk to return this matter to the agency for appropriate disposition.[1]

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1 I respectfully recommend the Commission consider informing applicant's for casino employee licensure who filed applications prior to January 4, 1988, who are no longer required to be licensed because of the change in the law, of the changes in the law, and inquire as to whether or not the applicants still desire to pursue their application for licensure or if they would like their applications converted to applications for registration as a casino hotel employee.

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

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

February 28, 1989
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

3/1/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 3 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

None

WITNESSES

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-4
LICENSE NO. 65099-21
OAL DOCKET NO. CCC 5748-88
ORDER NO. 89-13-14

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. CONRAD COPELAND, Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 29, 1989,

IT IS on this 31st day of April 1989, ORDERED that the initial decision is adopted;

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

ORDER NO. 89-13-14

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5748-88

AGENCY DKT. NO. 89-4

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

Petitioner,

v.

CONRAD COPELAND,

Respondent.

Norma L. Stancil, Deputy Attorney General, for the petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Conrad Copeland, respondent, pro se

Record Closed: January 19, 1989 Decided: February 10, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Conrad Copeland, is statutorily disqualified from holding casino employee license number 65099-21 by virtue of his plea of guilty to robbery (second degree) in violation of N.J.S.A. 2C:15-1 and forgery in violation of N.J.S.A. 2C:21-1(a)(2) (third degree). The Division also alleges that respondent does not possess the requisite good character, honesty and integrity for casino licensure, pursuant to section 89b(2) of the Casino Control Act (Act), as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to Section 90h of the Act.

New Jersey Is An Equal Opportunity Employer

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on July 1, 1988. The respondent requested a hearing on July 20, 1988. On August 1, 1988, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 28, 1988 and the matter was scheduled for hearing on January 19, 1989, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

A. Whether respondent was convicted of crimes listed as statutory disqualifiers in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:15-1, robbery, and N.J.S.A. 2C:21-1(a)2, forgery?

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

C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

FINDINGS OF FACT

The facts in this matter are essentially undisputed.

On or about August 29, 1986, the respondent, Conrad Copeland, cashed a check at Hummel's Liquors, Bridgeton, New Jersey. The check purportedly was signed by George R. Brewer and was drawn on the account of BHW Development Company, Inc., t/a Eden Construction Company at the Farmers and Merchants National Bank. The check for $170 was made payable to the respondent Conrad Copeland and endorsed by him on the back.

When Hummel's Liquors submitted the check to the Farmers and Merchants Bank, it was returned as having been reported stolen. At the time the check was reported stolen, Conrad Copeland worked for the BHW Development Company. After an investigation conducted by the Bridgeton City Police Department, Mr. Copeland admitted that he had cashed the check with the knowledge that it had been stolen.

Mr. Copeland was indicted on January 8, 1987, Indictment Number 87-01-0016-I, New Jersey Superior Court, Cumberland County Criminal Division, for forgery in violation of N.J.S.A. 2C:21-1a(2), and for uttering a forged instrument, in violation of N.J.S.A. 2C:21-1a(3) (Exhibit P-3).

On the evening of July 21, 1987, Mr. Copeland called Domino's Pizza in Bridgeton, New Jersey and ordered two large pizzas; the bill totaled $19.62. Mr. John Kaplan, Domino's delivery person, tried to deliver the pizzas to the address given and was unable to locate the address. After Mr. Kaplan drove by the intersection of Spruce and Garfield Avenues in Bridgeton, Mr. Copeland, on foot, approached Mr. Kaplan's vehicle and confirmed that he had ordered two large pizzas and discussed the bill with Mr. Kaplan. Mr. Copeland advised the driver to wait. After a short while, Mr. Copeland returned to the vehicle and told Mr. Kaplan that he had a gun and to give the pizzas to him. Mr. Kaplan gave the two pizzas to Mr. Copeland and proceeded to drive off as he had been instructed. Mr. Kaplan then reported the robbery to the Bridgeton City Police Department.

After an investigation, Mr. Copeland on July 27, 1987, was charged with robbery (second degree) on Accusation Number 87-07-0661-A/B in the Superior Court of New Jersey, Law Division (Criminal) (Exhibit P-7).

On July 27, 1987, Mr. Copeland pled guilty to forgery in violation of N.J.S.A. 2C:21-1a(2) (third degree) and robbery in violation of N.J.S.A. 2C:15-1 (second degree). The charge of uttering a forged instrument in violation of N.J.S.A 2C:21-1(a)3 was dismissed on motion of the prosecutor.

On September 28, 1987, Mr. Copeland was sentenced to serve 364 days in the Cumberland County Jail with credit for time served; was placed on probation for three years; was ordered to pay restitution in the amount of $170 and was ordered to pay $60 to the Violent Crimes Compensation Board (VCCB) (Exhibit P-9). The Honorable Isaac I.

Serata, J.S.C., also provided for the jail sentence to be suspended if Mr. Copeland would enter a drug rehabilitation program.

It appears that Mr. Copeland failed to report regularly to his probation officer and failed to pay the court-ordered restitution of $170 and the VCCB penalty of $60 which led to a violation of probation charges to be filed against him on December 27, 1988 (Exhibit P-11).

Mr. Copeland was extremely evasive in his testimony when questioned about his court-ordered appearance on January 13, 1989, and upon being asked about his employment application with Bally's Grand Casino Hotel (Grand) in 1988. However, Mr. Copeland has acknowledged his criminal past, but has emphasized that he is no longer dependent on drugs. Mr. Copeland provided two letters of recommendation but was unable to produce any evidence, other than his own testimony, that he is no longer drug-dependent. Unfortunately, Mr. Copeland's lack of candor and credibility leave me with no reliable evidence to make a finding as to Mr. Copeland's claim to be totally drug-free.

The above is documented, believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on July 27, 1987 to robbery, in violation of N.J.S.A. 2C:15-1 (second degree), and to forgery, in violation of N.J.S.A. 2C:21-1(a)(2) (third degree). Based upon the judgments of conviction and respondent's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to Section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as incorporated within section 90b

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

It is apparent from the documentary evidence and respondent's testimony that respondent lacks the requisite good character, honesty and integrity for casino licensure. Mr. Copeland was asked whether he disclosed his convictions upon applying for employment with the Grand. The respondent replied that he did not remember any questions pertaining to criminal convictions on the application. Not only does Question 7 of the application (Exhibit P-10) ask about criminal convictions, Mr. Copeland answered the question in the negative. Although the respondent dated the Grand application March 16, 1987, the preponderance of the evidence suggests that the application was actually signed on March 16, 1988, eight months after Mr. Copeland pled guilty to the statutory disqualifiers (See Exhibit P-10 at 1; R-1). While respondent's testimony alone may be the basis for a finding as to his/her attributes of good character, honesty and integrity, in this matter, the respondent has demonstrated just the opposite.

Based upon the paucity of the record and Mr. Copeland's absence of credibility, I **CONCLUDE** that respondent has failed to establish the good character, honesty and integrity required for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition of his continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mr. Copeland has been employed as a change booth supervisor at the Grand since March 1988. As such, he has substantial contact with patrons of the casino.

Second, the respondent pled guilty on July 27, 1987, to violations of N.J.S.A. 2C:15-1, robbery, and N.J.S.A. 2C:21-1(a)(2), forgery. Under section 86c(1) of the Act, both convictions are statutory disqualifiers. Given the circumstances, these were extremely serious offenses.

Third, the respondent acknowledges his misconduct. According to the respondent, he had on-going drug problems when the offenses occurred.

Fourth, respondent committed two separate and distinct statutory disqualifiers in October 1986 and July 1987.

Fifth, the respondent committed the offense at ages 26 and 27. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved his committing of offenses both in 1986 and 1987. The convictions are too recent to make a prediction as to whether the offenses are isolated or will be repeated.

Seventh, it appears that Mr. Copeland had a serious drug problem in 1986 and 1987. Although respondent declares himself to be drug-free, there is no evidence in the record to substantiate his claim.

Eighth, the respondent has demonstrated some rehabilitation. He has been employed by the Grand since March 1988. In addition, Theresa Williams, Coin Shift Manager at the Grand, characterizes Mr. Copeland as "reliable and trustworthy" (Exhibit R-1). Detective Sergeant Greg Everingham of the Bridgeton Police Department also speaks highly of Mr. Copeland (Exhibit R-2). Prior to his employment with the Grand, respondent had been terminated from the Sands Casino Hotel for failing to show up for work. Mr. Copeland pled guilty to the charges in 1987 and accepts responsibility for his misconduct. However, it appears that Mr. Copeland has failed to comply with the terms of his probation (Exhibit P-11). Finally, one irreconcilable fact remains: Mr. Copeland lied on his application with the Grand (Exhibit P-10). Given the deception demonstrated on Mr. Copeland's application of March 16, 1988, I cannot make a finding of rehabilitation.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including assessing the credibility and demeanor of Mr. Copeland, I am not persuaded that respondent has met his statutory burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the respondent, Conrad Copeland, has not affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER AND DISPOSITION

It is **ORDERED** that the casino employee license (65099-21) held by Conrad Copeland be **REVOKED.**

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

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

2-10-89
DATE

STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2/15/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 16 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

lar

LIST OF WITNESSES

For the petitioner:

Conrad Copeland

For the respondent:

Conrad Copeland

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Arrest Report, Bridgeton Police Department, dated October 27, 1986
P-2 Investigation Report, Bridgeton Police Department, dated September 15, 1986
P-3 New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment Number 87-01-0016-I, July 1986 term November 1986 session, dated January 8, 1987
P-4 Certified Copy of Judgment of Conviction filed January 8, 1987 and November 6, 1987, New Jersey Superior Court, Law Division (Criminal), Cumberland County
P-5 Arrest Report, Bridgeton Police Department, dated July 24, 1987
P-6 Investigation Report, Bridgeton Police Department, dated July 21, 1987
P-7 Accusation Number 87-07-0661-A/B, Superior Court of New Jersy, Law Division (Criminal), Cumberland County, dated July 24, 1987
P-8 Waiver of Indictment and Trial by Jury, Accusation Number 87-07-8661-A/B, filed July 27, 1987, New Jersey Superior Court, Law Division (Criminal), filed July 27, 1987
P-9 Certified copy of Judgment of Conviction, filed July 27, 1987 and November 13, 1987, New Jersey Superior Court, Law Division (Criminal), Cumberland County
P-10 Employment Application of Conrad Copeland with Bally's Grand Casino Hotel, dated March 16, 1988
P-11 Letter, dated January 25, 1989, from Harry E. Reasinger, Probation Officer, Criminal Division, Probation Department, Cumberland County, Bridgeton, New Jersey 08302

For the respondent:

R-1 Letter dated October 25, 1988, from Theresa Williams, Coin Shift Manager, Bally's Grand Hotel and Casino
R-2 Letter dated January 18, 1989, from Detective Sergeant Greg Everingham, Bridgeton, Police Department

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-356
OAL DOCKET NO. CCC 2904-88
LICENSE NO. 48693-21
ORDER NO. 89-9-14

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. MATTHEW B. CROWL, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 6th day of March 1989, ORDERED that the initial decision is modified as follows:

Reference to the issue of expungement is deleted;

IT IS FURTHER ORDERED that the casino employee license held by Matthew B. Crowl is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2904-88

AGENCY DKT. NO. 84-356

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

Petitioner,

v.

MATTHEW B. CROWL,

Respondent.

James Armstrong, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Guy S. Michael, Esq., for the respondent (Brown & Michael, attorneys)

Record Closed: December 6, 1988 Decided: December 23, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Matthew B. Crowl's casino employee license no. 48693-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A 5:12-129(1). The Division sought revocation of the respondent's license by reason of i contention that the respondent had committed a disqualifying offense under sec'

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86c(1), by means of section 86g, and had committed a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) (now section 86c(2)), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so he could be employed as a craps dealer in the casino industry. By complaint to the Commission, filed October 24, 1984, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of making false reports to law enforcement authorities, in violation of N.J.S.A. 2C:28-4a, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division further asserted that the respondent had committed the offense of possession, use or being under the influence of a controlled dangerous substance (tuinal), in violation of N.J.S.A. 24:21-20a(1) (now N.J.S.A. 2C:35-10); possession, use or being under the influence of a controlled dangerous substance (marijuana), in violation of N.J.S.A. 24:21-20a(4) (now N.J.S.A. 2C:35-10); underage gambling, in violation of N.J.S.A. 5:12-119; and gambling by a casino employee, in violation of N.J.S.A. 5:12-100n, which are disqualifying offenses under section 86c(4) (now section 86c(2)), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. Finally, the Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on November 1, 1984, that he had the right to a hearing, and that failure to respond within 15 days could result in his license being revoked. By application dated November 13, 1984, which was received by the Commission on November 16, 1984, the respondent requested a hearing. On April 15, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on April 22, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before me on June 20, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:28-4a.

B. Whether respondent's continued licensure...is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 5:12-100n, N.J.S.A. 24:21-20a(1) (now N.J.S.A. 2C:35-10), and N.J.S.A. 24:21-20a(4) (now N.J.S.A. 2C:35-10) [and N.J.S.A. 5:12-119] despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

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

D. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled for September 27, 1988. By letter dated September 19, 1988, the respondent's counsel requested an adjournment of the hearing as he had been recently retained. This request for an adjournment was granted, and the hearing was rescheduled. A hearing was held on December 6, 1988, in the Municipal Courtroom, Brigantine Municipal Building, Brigantine, New Jersey, after which the record was closed.

The respondent made two motions at the beginning of the hearing. First, the respondent moved that since this was a revocation case and not an initial application or reapplication case, the respondent's good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A 5:12-89b(2), as incorporated within section 90b, was not in issue, and if it was, the Division should have some minimal burden of first establishing that the respondent lacked good character, honesty and integrity. N.J.S.A. 5:12-1b(6) provides that:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons . . . related to the operation of licensed casino enterprises . . . .

Further, N.J.S.A. 5:12-1b(8) provides that:

> Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy of the State concerning gaming for private gain, participation in casino operations as a licensee or registrant under this act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant and upon the discharge of the affirmative responsibility of each such licensee or registrant to provide to the regulatory and investigatory authorities established by this act any assistance and information necessary to assure that the policies declared by this act are achieved. Consistent with this policy, it is the intent of this act to preclude the creation of any property right in any license, registration, certificate or reservation permitted by this act, the accrual of any value to the privilege of participation in gaming operations, or the transfer of any license, registration, certificate, or reservation, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege. [emphasis supplied]

The Act therefore provides that the privilege of licensure is conditioned upon the continuing qualification of the licensee. In this case, N.J.S.A. 5:12-90b requires licensees to "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[1] . . . ."

N.J.S.A. 5:12-89b provides that:

> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity.

Since qualification for licensure is a continuing obligation, any licensee must be able to establish by clear and convincing evidence the licensee's good character, honesty and integrity at any time during licensure, not just upon initial application or renewal. The burden of proof to establish one's continued qualification for licensure is upon the licensee, and thus the Division need not first produce evidence that the licensee lacks good character, honesty and integrity. The respondent's first motion was therefore denied.

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[1] N.J.S.A. 5:12-89.

The respondent's second motion was a request to address whether or not the respondent's alleged offenses were inimical to the policies of the Act if those offenses were the subject of a judicial expungement. Certain of the respondent's offenses were dismissed through his successful participation in the Pre-Trial Intervention Program. As such, the respondent is eligible to have these records expunged or sealed pursuant to N.J.S.A. 2C:52-6. While no such motion had yet been filed as of the date of the hearing, the respondent's counsel represented that such a motion would be eminently filed with the Superior Court and an order of expungement might be final prior to the Commission's consideration of this initial decision. As N.J.S.A. 5:12-86c(2) provides that any "conviction which has been the subject of a judicial order of expungement or sealing" shall not be an automatic disqualification, I granted the respondent's motion to address this matter in this initial decision.

FACTUAL DISCUSSION

On June 1, 1984, Commission Inspector Vernon Rhett, while walking past craps table no. 14 at pit no. 6 in the Tropicana Hotel and Casino, overheard one patron, the respondent, tell another patron that he was a craps dealer (P-5). Inspector Rhett telephoned the Division, and State Police Detective Martin Higgins was dispatched to the Tropicana. Inspector Rhett identified the respondent to Detective Higgins. Detective Higgins identified himself to the respondent and asked the respondent to accompany him to the Division's office.

The respondent was placed under arrest for underage gambling and was advised of his rights. The respondent admitted he was a gaming employee, identified himself as being Peter Manno and gave his age as being 19. Detective Higgins searched the respondent and found a plastic bag containing what he believed to be marijuana and two capsules in the respondent's pants pocket. The respondent was then released to the custody of the Atlantic City Police Department.

Detective Higgins determined the capsules to be the controlled dangerous substance tuinal by reference to the Physician's Desk Reference. Later that day, Detective Higgins swore out three complaints against the respondent under the name John Doe aka Peter Manno. The first charged the respondent with possession of a controlled dangerous substance, tuinal, in violation of N.J.S.A. 24:21-20a(1) (P-1); the second charged the respondent with possession of marijuana in violation of N.J.S.A. 24:21-20a(4) (P-2);

and the third charged the respondent with gambling while being underage in violation of N.J.S.A 5:12-119 (P-3).

The next day an article appeared in the Atlantic City Press regarding the arrest in a casino on drug charges of Peter Manno. The real Peter Manno's mother saw the article, telephoned an Atlantic City police officer, and established that her son was not involved in the arrest. The Atlantic City police officer then relayed this information to Detective Higgins. The respondent also saw this article. Since drug charges were involved, the respondent wanted to clear the name of Peter Manno. He contacted a local attorney, Harry Goldenberg, informed Mr. Goldenberg of his predicament, and Mr. Goldenberg contacted the police informing them that Peter Manno was really Matthew Crowl. Based upon this information, on June 5, 1984, Detective Higgins filed a complaint against the respondent charging him with knowingly giving false information with the purpose of implicating another in violation of N.J.S.A. 2C:28-4a (P-4).

The first three charges were merged for purposes of trial. On February 25, 1986, the respondent was entered into the Pre-Trial Intervention Program (PTI). The respondent successfully completed this program and on March 19, 1987, the three charges were dismissed (R-1). At the hearing before me the respondent admitted that on June 1, 1984, he possessed two tuinal capsules, possessed under 25 grams of marijuana, gambled while being only 19 years old, and was under the influence of alcohol and marijuana at the time he was gambling. The respondent was not notified of any further proceedings concerning the false information charge contained in P-4.

The respondent is 23 years old and will be 24 in January. He left high school in his sophomore year at the age of 16 to go to work. He took two of four tests to earn a G.E.D. a year or two ago; however, he has never completed the remaining two tests. In February 1984, the respondent completed a three-month course of instruction at a casino school to become a casino craps dealer. The respondent needed nine months to complete the course because he was working. In April 1984, the respondent was hired as a part-time craps dealer at the Playboy Hotel and Casino. From December 1984 until September 1985, the respondent was employed as a parking attendant at Bally's Park Place. From September 1985 until May 1986, the respondent attended a bartending school at Atlantic Community College and worked as a bartender at the Clover Bar in Atlantic City. From July 1986 until February 1987, the respondent worked as a craps dealer at the Tropicana Hotel and Casino. While employed at the Tropicana, the respondent received

charges for lateness and excessive absenteeism. He received two warnings and was ultimately terminated from his position. Upon leaving the Tropicana, the respondent became employed as a part-time dealer at Bally's Park Place. Again the respondent received charges for lateness and excessive absenteeism. He received two warnings and was suspended for five days. The respondent resigned from this employment on December 24, 1987. In March 1988, the respondent became employed as a craps dealer at the Sands Hotel and Casino where he is currently employed.

The respondent has no prior or subsequent criminal involvement; however, since 1984, the respondent has received two traffic citations: one for speeding and one for reckless driving. Due to his reckless driving conviction, the respondent received notification of the imposition of an insurance surcharge; however, the respondent has not paid the insurance surcharge.

The respondent performed community service as a little league coach as part of his PTI program. The respondent participates in a sports league at the Sands, is a member of the Chelsea hockey team, and serves as a coach and an umpire in the Chelsea little league.

With regard to the use of the name Peter Manno, the respondent indicated that it was not his intent to get Peter Manno in trouble. Peter Manno is a friend of the respondent. The respondent had only been employed at Playboy for three months, he was scared, and he was afraid he might lose his job. He identified himself as Peter Manno because he did not think Peter Manno was licensed by the Commission and thus the criminal involvement would not affect his job.

The respondent submitted four letters of recommendation in his behalf. The first was written by Patricia Robel. Ms. Robel is a friend of the respondent's mother who has known the respondent since he was a child. Ms. Robel wrote:

> I have known Matthew Crowl all his life. He is a fine young man with good values. He is hard working, smart and I believe he will have a wonderful future in the job field he has chosen. I know him to be good to his family and friends. He is a very worthwhile person. [R-2]

The second letter was written by Francis J. Perry, Jr. Mr. Perry was the respondent's former little league coach. Mr. Perry wrote:

> I have known Matthew for fifteen years and know him to be of fine character and able ability.
>
> He was an excellent student throughout his school years. He was a sportsman who exhibited many fine qualities that one would wish to see exemplified in the workforce. He is cooperative, punctual, fair and honest.
>
> The Casino Industry would be well served by keeping Matthew Crowl employed in their service. [R-3]

The third letter was written by Robert J. Catalano. Mr. Catalano is the father of one of the respondent's friends and was another of the respondent's little league coaches. Mr. Catalano wrote:

> I've known Matthew Crowl for the past fifteen years, and have found him to be a responsible youth. In particular his devotion to sports both in playing himself and his coaching of younger players has matured Matt to a resoonsible [sic] adult. I've also known Matt's family for the same period and also find them caring people. [R-4]

The final letter was written by Edgardo Pinero, Jr. Mr. Pinero is a friend and former roommate of the respondent's brother. He was a coworker of the respondent's at Sands, and he has known the respondent for seven years. Mr. Pinero wrote:

> It has been my pleasure to have known and worked with Matthew Brian Crowl. In the seven years I have known Matthew and his family, I have seen him mature into an honest and dependable young man. In my opinion, he is able to interact with people well. On the job, he is very caring and takes the time to help out fellow employees. [R-5]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the doeuments submitted by other witnesses, it appears that the respondent testified truthfully. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. On June 1, 1984, the respondent gambled at a craps table in the Tropicana Hotel and Casino. At that time the respondent was only 19 years old.

2. On June 1, 1984, the respondent was employed as a craps dealer at the Playboy Hotel and Casino.

3. On June 1, 1984, while the respondent was at the Tropicana Hotel and Casino, he was in possession of a controlled dangerous substance, tuinal, and the controlled dangerous substance, marijuana. At that time, he was also under the influence of alcohol and marijuana.

4. On June 1, 1984, the respondent was placed under arrest by a state police detective, and at that time, the respondent identified himself as Peter Manno.

5. The respondent was charged with two counts of possession of a controlled dangerous substance and one count of gambling while underage. These charges were merged for purposes of trial. The respondent entered and successfully completed the Pre-Trial Intervention Program.

6. The respondent is 23 years of age. He left high school in his sophomore year and he has not completed his G.E.D. In April 1984, the respondent was hired as a part-time craps dealer at the Playboy Hotel and Casino. From December 1984 until September 1985, the respondent was employed as a parking attendant at Bally's Park Place. From September 1985 until May 1986, the respondent attended a bartending school at Atlantic Community College and worked as a bartender

at the Clover Bar in Atlantic City. From July 1986 until February 1987, the respondent worked as a craps dealer at the Tropicana Hotel and Casino.

7. While employed at the Tropicana, the respondent received charges for lateness and excessive absenteeism. He received two warnings and was ultimately terminated from his position.

8. Upon leaving the Tropicana, the respondent became employed as a part-time dealer at Bally's Park Place. Again the respondent received charges for lateness and excessive absenteeism. He received two warnings and was suspended for five days. The respondent resigned from this employment on December 24, 1987.

9. In March 1988, the respondent became employed as a craps dealer at the Sands Hotel and Casino where he is currently employed.

10. Since 1984, the respondent has received two traffic citations: one for speeding and one for reckless driving. Due to his reckless driving conviction, the respondent received notification of the imposition of an insurance surcharge; however, the respondent has not paid the insurance surcharge.

11. The respondent participates in a sports league at the Sands, is a member of the Chelsea hockey team, and serves as a coach and an umpire in the Chelsea little league.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S.A. 2C:28-1 et seq. (perjury and other falsification in official matters which constitute crimes of the second, third or fourth degree);
>
> . . . .
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;
>
> . . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State....

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

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

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

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends, by means of section 86g, that the respondent committed a violation of N.J.S.A. 2C:28-4a, false reports to law enforcement authorities, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued licensure. The Division further contends, by means of section 86g, that the respondent committed a violation of N.J.S.A. 24:21-20a(1) (now N.J.S.A. 2C:35-10), possession, use or being under the influence of a controlled dangerous substance (tuinal); N.J.S.A. 24:21-20a(4), possession, use or being under the influence of a controlled dangerous substance (marijuana); N.J.S.A. 5:12-119, underage gambling; and N.J.S.A. 5:12-100n, gambling by a casino employee, which constitute violations of N.J.S.A. 5:12-86c(4) (now section 86c(2)), and that, accordingly, he is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure or registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's identification of himself as Peter Manno in response to questioning from a State Police detective constitutes a violation of N.J.S.A. 2C:28-4a, which, under the circumstances, disqualifies the respondent from continued licensure.

N.J.S.A. 2C:28-4, False reports to law enforcement authorities, provides in pertinent part:

> a. Falsely incriminating another. A person who knowingly gives or causes to be given false information to any law enforcement officer with purpose to implicate another commits a crime of the fourth degree.

N.J.S.A. 2C:28-4 is the successor statute to N.J.S.A. 2A:148-22.1. N.J.S.A. 2A:148-22.1 has been interpreted regarding the giving of a false name to police. In State v. Daniels, 165 N.J. Super. 47 (App. Div. 1979), the court stated:

> While the underlying purpose of the statute is concededly to prevent "waste of investigative resources" and to prevent distraction and misleading of the police from their activity in detection and investigation of crime, see State v. Sotteriou, 132 N.J. Super. 403, 410 (App. Div. 1975), we believe the full scope of the legislative contemplation as to the prohibited conduct extends to the prophylactic purpose of the statute in preventing conduct which could mislead, deter and distract the police, even though, in the particular instance, the false information provided did not in fact have any adverse effect upon the police investigation. All that is essential is that the information given must have been false and that it might have had a relationship to the crime and to normal police activity directed toward the detection of any offenders implicated and any investigation related thereto.
>
> In the present case the facts and circumstances come well within the stated rationale. As the State correctly maintains, an apprehended suspect's name is invariably material to an investigation of the crime involved. In the instant case defendant's conduct caused a waste of police time and effort. On the evening of the incident an arrest sheet, apparently with fingerprints and a photograph, had been prepared using the false name. Moreover, it cannot be said that there was no need for further investigation after the apprehension of defendant. . . . Further investigative work was necessary to determine exactly what crime defendant had committed, whether there were any confederates, how the other missing property had been disposed of and who was responsible therefor. Relevant to such an investigation would be the questioning of defendant's known associates and the checking of any prior criminal record of his. Thus the relationship of defendant's identity to a full and proper investigation of this crime is apparent. . . . Specifically, we deem the making of false statements as sufficient alone to support the statutory charge of giving false information to the police if that information has a relationship to the crime and a potential of misleading, distracting or hindering a police investigation of it. [at 50, 51 & 52]

In this case, the respondent falsely identified himself as being Peter Manno after being arrested. He stated that he did not want to get Peter Manno in trouble, but he

was scared and did not want to risk losing his casino employee license. If he gave the name of a person who did not hold a casino employee license, he believed his license would not be in jeopardy. In this case, the supplying of false information did mislead police and caused a waste of police time and effort. Reports were prepared and three complaints were filed against Peter Manno. In addition, further investigation was required upon discovering that the respondent was not Peter Manno. Based upon the above, the Division has established, by the preponderance of the credible evidence, that the respondent gave false information to law enforcement authorities and falsely incriminated Peter Manno, in violation of N.J.S.A. 2C:28-4a. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued licensure, pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

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

A licensee faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

> work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

In regard to the first criterion, Matthew B. Crowl is a casino licensee and is employed as a craps dealer. As such, he does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:28-4a, falsely incriminating another, while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. After being arrested, the respondent falsely identified himself to the arresting officer. Police reports were prepared and complaints were filed against Peter Manno. The newspaper reported Peter Manno's arrest the next morning and his family became alarmed. Further investigation was required because the respondent lied to the arresting officer. The respondent lied primarily to save his casino employee license. Such conduct cannot be tolerated and is extremely serious.

Fourth, the respondent's misconduct occurred on June 1, 1984, when it ceased.

Fifth, the respondent was 19 years old at the time of the first offense. I believe immaturity was a factor in this case. The respondent was young, had not completed high school, and had just obtained his first job in the industry. He did not want to risk losing his job; he became scared, and lied to the police officer.

Sixth, the respondent's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, the respondent was young, had not completed high school, and needed to work to support himself and help support his mother, brother and sister.

Eighth, the respondent has made few rehabilitative efforts. He has been employed in the industry; however, his employment record has been poor. He had a poor record at the Tropicana, was first disciplined and then fired. He was also given two warnings and then suspended at Bally's Park Place. The respondent was employed at the Tropicana while he was enrolled in the PTI program; however, he was not a model

employee. Since 1984, the respondent has committed two motor vehicle violations — one for speeding and one for reckless driving. An insurance surcharge has been imposed; however, the respondent has failed to pay it. He took the first two tests for his G.E.D. a year or two ago; however, he has not completed the program. The respondent has been active in sport's leagues and has coached little league.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g

As indicated above, section 86g provides that a licensee or registrant will be disqualified from licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act (now section 86c(2)) is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory

process and of casino operations," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

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

> At the very heart of the public policy embraced by the new law is 'the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations.' N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that 'the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to' casinos and that 'comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process.'

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent wrongfully possessed the controlled dangerous substance tuinal, wrongfully possessed and used the controlled dangerous substance marijuana, gambled while underage, and gambled while holding a casino employee license. None of these alleged offenses are listed as disqualifiers under section 86c; as such the Division asserts that these alleged offenses are disqualifying offenses under section 86c(4) (now section 86c(2)) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State.

The statutory provisions of N.J.S.A. 24:21-20a(1) and (4) have been repealed and recodified in N.J.S.A. 2C:35-10. This successor statute provides in pertinent part:

> 2C:35-10. Possession, use or being under the influence
>
> a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless

> the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.). Any person who violates this section with respect to:
>
> > (1) A controlled dangerous substance, or its analog, classified in Schedules I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, a fine of up to $25,000.00 may be imposed;
> >
> > . . .
> >
> > (3) Possession of more than 50 grams of marijuana, including any adulterants or dilutants, or more than five grams of hashish is guilty of a crime of the fourth degree, except that, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, a fine of up to $15,000.00 may be imposed; or
> >
> > (4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.
> >
> > . . .
>
> b. Any person who uses or who is under the influence of any controlled dangerous substance, or its analog, for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician is a disorderly person.

The elements of the offense are: a) that the substance is a controlled dangerous substance (tuinal and marijuana); b) that the respondent knew the substances were tuinal and marijuana; and c) that the respondent possessed or used the tuinal or marijuana. In this case, the respondent admitted that the substances were tuinal and marijuana, that he knew the substances were tuinal and marijuana when he possessed them, and that he possessed the tuinal and marijuana and was under the influence of marijuana at the time of his arrest. Detective Higgins found the substances in the respondent's possession and identified the substances as tuinal and marijuana. Tuinal is the trade name for a generic barbituate which is classified as a Schedule II controlled dangerous substance in N.J.A.C. 8:65-10.2(b). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct of possessing tuinal constitutes a violation of N.J.S.A. 2C: 35-10a(1). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-10a(1), the offense constitutes a

crime of the third degree. I further **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct of possessing marijuana is a violation of either N.J.S.A. 2C:35-10a(3) or (4), depending on the quantity involved. Pursuant to these sections, if the quantity was greater than 50 grams, the offense constitutes a crime of the fourth degree while if the quantity possessed was less than 50 grams, the offense constitutes a disorderly person offense. I further **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct of being under the influence of marijuana is a violation of N.J.S.A. 2C:35-10b and constitutes a disorderly person offense.

N.J.S.A. 5:12-119, Gaming by certain persons prohibited; penalties; defenses, provides in pertinent part:

> a. No person under the age at which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino except by way of passage to another room.

On June 1, 1984, Commission Inspector Rhett and State Police Detective Higgins saw the respondent, and the respondent admitted, playing craps at the Tropicana Hotel and Casino. At that time, the respondent was only 19 years of age as he was born on January 26, 1965. Pursuant to N.J.S.A. 9:17B-1b, the age at which a person is authorized to purchase and consume alcoholic beverages in this State is 21 years of age or older.[2]

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 5:12-119a. I further **CONCLUDE** that, pursuant to N.J.S.A. 5:12-122, the offense constitutes a disorderly persons offense.

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[2] An exception to this law is if a person under 21 attained the age to purchase and consume alcoholic beverages legally prior to January 1, 1983. As the respondent did not turn 18 until January 26, 1983, this exception does not apply in this case.

N.J.S.A. 5:12-100n provides:

> It shall be unlawful for any casino key employee, other than a junket representative, or any casino employee, other than a bartender, waiter, waitress, or other casino employee who in the judgment of the commission is not directly involved with the conduct of gaming operations, to wager at any game in any casino in this State.

Again, Commission Inspector Rhett and State Police Detective Higgins saw the respondent gamble at a craps table in the Tropicana Hotel and Casino on June 1, 1984. The respondent also admitted to this activity. On that date, the respondent was the holder of a casino employee license issued by the Commission and was employed as a craps dealer at the Playboy Hotel and Casino. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 5:12-100n.

N.J.S.A. 5:12-112, Unlicensed casino gambling games unlawful; penalties, provides in pertinent part,

> a. Any person who violates the provisions of sections 80 or 82 or of Article 7 of this act,[3] . . . is guilty of a misdemeanor and subject to a term of imprisonment of not more than three years or a fine of $25,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than $100,000.00.

Pursuant to N.J.S.A. 2C:43-1b, "a crime defined by any statute of this State other than this code and designated as a misdemeanor shall constitute for the purpose of sentence a crime of the fourth degree." Accordingly, I **CONCLUDE** that, pursuant to N.J.S.A. 5:12-112 and N.J.S.A. 2C:43-1b, the offense of wagering at any game at any casino in this State by a casino employee constitutes a crime of the fourth degree.

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[3] Sections 5:12-96 to 5:12-106.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. No. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

In the Davis case, the Commission stated at 313-314:

> Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitation provisions apply only to '. . . a conviction of any of the offenses enumerated in this act as disqualification criteria.' Nevertheless, many of the factors that are considered upon a claim of rehabilitation are included within the inimical analysis.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis . . . [and] the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not inimical under section 86(c)(4). Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4). [Id. at 314] [footnote omitted]

As previously indicated, the eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or the registrant's position;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the licensee or registrant when the offense was committed;

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

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

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

The discussion of the first criterion is included in section B of this decision and is incorporated here by reference.

Second, the respondent committed three different violations of N.J.S.A. 24:21-20a (now N.J.S.A. 2C:35-10) — possession of a Schedule II controlled dangerous substance (tuinal) and possession and being under the influence of a controlled dangerous substance (marijuana); one violation of N.J.S.A. 5:12-119a, underage gambling; and one violation of N.J.S.A. 5:12-100n, gambling by a casino employee. As these offenses were committed by a casino employee in a licensed casino, they are very serious.

Third, the seriousness of the offenses must be viewed in their appropriate context. The respondent, a licensed casino employee, was in the possession of two different controlled dangerous substances and was under the influence of one of them while in a licensed casino. The possession and use of controlled dangerous substances in a licensed casino cannot be condoned by anyone, let alone a licensed casino employee. The respondent's status is thus an aggravating factor in this case. The respondent's gambling while underage is also aggravated by the fact that the respondent was a licensed casino employee. As a dealer, he knew that underage persons were prohibited from wagering in a licensed casino, and as a licensed employee, had a duty to prevent underage persons from wagering in a licensed casino. As such he consciously violated the provisions of the Act. Finally, gambling by a casino employee is an offense and a serious violation of the Act. The wagering by a licensed casino employee directly threatens the credibility and integrity of the regulatory process of casino operation and the public confidence and trust in that process. As such, it is a serious offense and a direct violation of the Act by a licensed casino employee.

The discussion of the fourth through eighth criteria is included in section B of this decision and is incorporated here by reference.

Based upon the foregoing, and specifically criteria one, two, three, and eight, I find that the respondent's possession and use of controlled dangerous substances in a licensed casino by a licensed casino employee, and his gambling underage and wagering by a licensed casino employee is sufficient to establish that the continued licensure of the respondent is inimical to the policies of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4) (now section 86c(2)), by means of section 86g. If, however, the offenses of wrongful possession of the controlled dangerous substance tuinal, wrongful possession of the controlled dangerous substance marijuana, and gambling while underage are judicially expunged or sealed prior to the Commission's final consideration of this case, then pursuant to N.J.S.A 5:12-86c(2), those offenses may not be considered in determining whether or not the continued licensure of the respondent would be inimical to the policies of the Act. Notwithstanding this, the offenses of use of a controlled dangerous substance (marijuana) and gambling while holding a casino employee license would still remain. As such, I further **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would still be inimical to the policies of the Act, pursuant to section 86c(4) (now section 86c(2)), by means of section 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Crowl was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, but did occur in a licensed casino and the underlying circumstances aggravated the seriousness of the misconduct. The respondent has fully accepted responsibility for his misconduct, has regained control over his behavior, has worked within the casino industry during the past four years but has had a poor work record, and is somewhat involved in his community. An examination of the whole person does not clearly and convincingly establish that Mr. Crowl is a person of good character, honesty and integrity, nor is he entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

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

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that license no. 48693-21 be revoked.

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

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

December 23, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1-4-89
DATE

Marianne Farrow
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 5 1989
DATE

Ronald J. Tabakin/K.S
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Complaint, violation of N.J.S.A. 24:21-20a(1), dated June 1, 1984
P-2 Complaint, violation of N.J.S.A. 24:21-20a(4), dated June 1, 1984
P-3 Complaint, violation of N.J.S.A. 5:12-119, dated June 1, 1984
P-4 Complaint, violation of N.J.S.A. 2C:28-4a, dated June 5, 1984
P-5 New Jersey State Police Investigation Report, dated June 1, 1984

For the Respondent:

R-1 Pre-Trial Intervention program documents
R-2 Letter of Patricia Robel, dated May 4, 1988
R-3 Letter of Francis J. Perry, Jr., dated April 24, 1988
R-4 Letter of Robert J. Catalano, dated April 28, 1988
R-5 Letter of Edgardo Pirero, Jr., undated

WITNESSES

For the Petitioner:

Detective Martin Higgins, New Jersey State Police

For the Respondent:

Mathew B. Crowl, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-2
REGISTRATION NO. 67773-40
OAL DOCKET NO. CCC 5875-88
ORDER NO. 89-11-15

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

Complainant,

v.

MARK PHILLIP CRUMBLE,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 6th day of April 1989, ORDERED that the initial decision is adopted; and

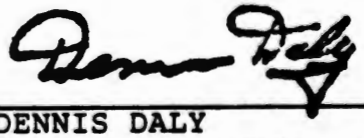
IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

ORDER NO. 89-11-15

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) substantially for the reasons stated in the initial decision, as amplified on the record at the Commission's public meeting of March 15, 1989, to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5875-88
AGENCY DKT. NO. 89-2

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
MARK PHILLIP CRUMBLE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Mark Phillip Crumble, respondent, pro se

Record Closed: January 23, 1989 Decided: January 27, 1989

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

The Division of Gaming Enforcement filed a complaint on July 1, 1988, with the Casino Control Commission seeking revocation of respondent's casino employee hotel registration. Mr. Crumble requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 28, 1988, before Honorable Stephen W. Thompson, ALJ. Judge Thompson issued a Prehearing Order on November 7, 1988. A hearing was held on January 23, 1989, before Honorable Jeff S. Masin, ALJ. The record closed following completion of the hearing on that date.

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ISSUES

The Prehearing Order established the issues for consideration at the hearing. They are:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(10, to wit: N.J.S.A. 2C:35-5(a)(1), possession of a controlled dangerous substance with intent to distribute.

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

EVIDENCE

At the hearing, the Division of Gaming Enforcement presented evidence concerning Mr. Crumble's past criminal history. Crumble was convicted of a charge of possession of a controlled dangerous substance with intent to distribute arising out of an indictment returned against him, no. 85-08-1277-B, by the Atlantic County Grand Jury on August 13, 1985. That indictment charged Crumble and a codefendant with possession of cocaine in violation of N.J.S.A. 24:21-20a(10); possession with intent to distribute the cocaine in violation of N.J.S.A. 24:21-20a(1); possession with intent to distribute the cocaine in violation of N.J.S.A. 24:21-19a(1); and conspiracy to distribute a controlled dangerous substance in violation of N.J.S.A. 24:21-24. On November 1, 1985, Mr. Crumble entered a please of guilty to the charge of possession of cocaine with intent to distribute and was sentenced by Honorable Manuel H. Greenberg, JSC, to 18 months probation and 180 days in the Atlantic County Jail with credit for two days, as well as a $25 Violent Crimes Compensation Board payment payable prior to release and the forfeiture of all monies seized at the time of the arrest. The remaining counts of the indictment were dismissed.

In addition to the 1985 conviction, testimony at the hearing evidenced that on September 17, 1987, Mr. Crumble was indicated by the Atlantic County Grand Jury on charges of possession of heroin and possession of heroin with intent to distribute, in violation respectively of N.J.S.A. 2C:35-10a(1) and N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3). In addition, he was charged with possession of heroin within 1000 feet of

school property in a quantity of less than one-half ounce, with intent to distribute it, contrary to N.J.S.A. 2C:35-7 and N.J.S.A. 2C:35-5a(1). The incident resulting in this indictment occurred on August 19, 1987. On January 21, 1988, Mr. Crumble was sentenced to five years imprisonment with credit for one day served, a $30 Violent Crimes Compensation Board penalty, a $1,000 Drug Enforcement Demand Reduction (DEDR) penalty, a $50 lab fee and a one-year revocation of his driver's license, based upon his plea of guilty to the charge of possession of the heroin with intent to distribute. The remaining counts of the indictment were dismissed. The sentence in this matter was imposed by Honorable Arthur V. Guerrera, JSC. According to Mr. Crumble's testimony at the hearing, he served three and one-half months in Bordentown Reformatory on this sentence and was then paroled under the Intensive Supervision Program (ISP), entering into that program on May 5, 1988. Crumble anticipates that he will remain under this program until September 1989 when he believes that if he satisfactorily completes the intensive supervision, the parole period will end.

The two convictions referred to above constitute the basis for the Division's allegation that Mr. Crumble has been convicted of an offense which is listed in the Casino Control Act as an automatic disqualification from licensure or registration, N.J.S.A. 5:12-86c(1). Mr. Crumble did not dispute and in fact readily admitted the convictions.

With respect to the issue of rehabilitation, which by statute is an issue where a licensee or registrant is shown to be otherwise disqualified by automatic disqualification of section 86c(1), the Division presented evidence anticipatory of the claim of rehabilitation with respect to another incident in Mr. Crumble's criminal past. Mr. Crumble was indicted on May 26, 1983, by the Atlantic County Grand Jury on a charge of possession of a hand gun without a permit, a violation of N.J.A.C. 2C:39-5(b). The indictment charged in three counts that he had possessed two 32 caliber hand guns and a 38 caliber hand gun on April 4, 1983, in Atlantic City. Crumble pled guilty to count one of the indictment on July 11, 1983, and was sentenced on July 22, 1983, by Honorable Manuel Greenberg, JSC, to 60 days in the Atlantic County Jail, with credit for two days served. In addition, a $25 penalty to the Violent Crimes Compensation Board was payable within 30 days of the sentence and the remaining counts of the indictment were dismissed. At the time, Mr. Crumble had no prior criminal record. His sentence was suspended and he was placed on probationary supervision for one year.

Mr. Crumble testified as both a State's witness, affirming the truth of the State's allegations concerning his criminal record, and as his own witness. He explained that at the time of his conviction on the gun charge, he was 22 years old. He is now 27. At the time of his arrest in August 1987, he acknowledged that he had $362 in his possession which he had accumulated for selling drugs. However, Crumble asserted that he was making no "profit" on his drug sales, as established by the repossession of an automobile and other finanacial difficulties which he contended he would not have had had he been using the proceeds of his drug sales for other than the purpose for which he asserted, which was to pay for drugs which he was using.

Mr. Crumble explained that at the time of his first conviction on the gun charges, he was a member of a street gang, acting wild. The guns were found in an automobile. After this incident, he continued to hang in the streets and "get high." The six months in jail and a year and one-half of probation did not change his ways. He came back to the streets and did the same things as he had done before, becoming hooked on drugs. He was paying no attention to anything. This resulted in his second conviction, the first of the drug offenses. That 1985 incident and the sentence imposed, that is, the 18 months probation and the six months in the county jail, was apparently insufficient to change his ways. However, following his last conviction in early 1988 and his stay for three and one-half months in prison, Crumble determined that that life was not for him and returned home changed. He found that he missed his family, his wife, his children, his mother, etc., and he did not want to continue on the path which he had been following. His wife supported him and stayed with him and this was quite meaningful to him. After his return from prison and entrance into the Intensive Supervision Program, he became a traffic controller at the Showboat Casino Hotel where he works checking machines, giving out parking lot tickets, directing cars, etc. He has been employed at the Showboat for seven and one-half months since June 5, 1988, and has been quite successful in his employment, being offered promotion on several occasions to the position of car jockey, a promotion which he has turned down pending the outcome of these revocation proceedings.

Mr. Crumble returned home and obtained an apartment for his family. Previously, he had been living in his mother's house and he explained that he believed that the additional responsibility placed on him by the necessity of supporting himself and his family in a home of their own was significant in giving him more of a sense of worth and a

better outlook on the need for living a law abiding life. Mr. Crumble is required as part of the Intensive Supervision Program to provide three urines a week and to observe a curfew which was 10 o'clock, although recently extended to 11 o'clock during the week and 12 o'clock on weekends. He has had only one incident of missing the curfew, when he was five minutes late getting home as a result of a hangup at work. However, he called his Intensive Supervision Program Supervisor at that time and advised him that he was going to be late.

Crumble is engaged in community service at the local community center. He takes great interest in sports and helping with coaching, refereeing and training of youth. He has been staying away from the people he was running with on the streets prior to his last arrest and conviction, living at home with his wife and five and two-year-old children, supporting them and working. He has had no disciplinary problems at all at work.

Crumble was previously employed in 1985 as a houseman at Trump Castle Casino. He worked there for 11 months, but was terminated from his employment when he accumulated too many points against him on the union point factor system as a result of days which he missed, largely because of his heroin and cocaine use. According to Crumble, he last used drugs prior to going to prison in December 1987.

Anthony Cirillo, who is a valet parking supervisor at Showboat Casino and the immediate supervisor of Crumble, testified that Crumble's performance at work has been "great." He is always on time and most helpful. He was on probation for 90 days at the beginning of his employment and after that time received a Showboat Employee Performance Appraisal on which he received a rating of 3.1 out of a possible four, quite an acceptable rating, above the average. The comment on the document, which was prepared largely by the other supervisors who were then supervising Crumble more than Cirillo, who now has more responsibility for him then in the past, was "Mark does his job well, especially during busy periods. His extra help is appreciated." The employee improvement plan at that time indicated Mark could have better customer courtesy. He is at times too loud and too demanding. More initiative during slow periods would be appreciated."

Mr. Cirillo confirmed Crumble's testimony concerning the offer of promotions and Crumble's determination not to accept these until this matter was concluded.

Cirillo's involvement with Crumble is strictly related to business and he did not know him prior to June 1988. He was vaguely aware of Crumble's having been arrested on drug-related charges, information which he obtained from Crumble.

William H. Marsh, Crumble's sponsor in the Intensive Supervision Parole Program, testified that he has known Crumble for eight years, initially through sports activities and interests at the Uptown Community Complex. Marsh is a community coordinator employed by the Atlantic City Board of Education. He has become far more involved with Crumble on a personal basis since Crumble's release from prison under Intensive Supervision parole. Prior to that time, they would communicate largely about sports and other such matters, but since Crumble's release and Marsh's undertaking of the supervisory role, he has engaged in much conversation with Crumble concerning Crumble's life, what he is doing, where he is going, etc.

Marsh testified that Crumble has been extremely involved in community center related sports activities with various groups of persons. Crumble was very involved with the summer basketball program and volunteered his aid for this operation, which had limited funding. He has been active with preteens and adults, is now involved in an evening program and generally makes himself quite available to assist with these community services.

Marsh was familiar with Crumble's criminal history. He now meets with the rspondent three times a week and attempts to serve as a role model for him.

James D. Salvaryn, Intensive Supervision Officer assigned to supervise Mr. Crumble, testified that he has been an Intensive Supervision Officer for three years and was prior to that an Atlantic County Probation Officer for seven years. Crumble has been assigned as his charge since May 5, 1988. Salvaryn's responsibility is to supervise the respondent's adjustment. He finds that Crumble is doing very well and is a "sincere candidate." He is willing to put forth extra effort and willing to make adjustments in his schedule in order to "go the extra mile." He went out of his way to make sure that he would not miss meetings which he attends on a group basis. These meetings are held on Monday nights at one end of Atlantic City and when Crumble found that his work schedule was changed and he had to work Monday nights, he worked out a plan by which he would combine his breaks and lunch time in order to allow him to leave work, go to the meetings

at the other end of Atlanti City, and return to work, so as not to miss the meetings. According to Salvaryn this was somewhat beyond the call of duty as the ISP program would be willing to make adjustments when necessary for work schedules, etc.

The witness has had 218 contacts with Crumble up to December 31, 1988. He has also taken 46 random urine samples, none of which have come back with any positives. The program tests by way of a basic screen for 12 different types of drugs, as well as THC.

As of December 31, Mr. Crumble has put in 146 hours of community service. This is beyond the required 124 hours. He has also paid $270 of the DEDR penalty, has paid off the $50 lab fee and the Violent Crimes Compensation Board fee. Based on the schedule in effect and the payments made, Salvaryn sees no reason why Crumble should not be able to pay of his entire obligation under DEDR, as well as the $500 fee charged for supervision, before the end of his ISP program.

The witness opined that Mr. Crumble was meeting the challenge of adjustment and was rehabilitating himself. He is now a family man, who Salvaryn has observed as being "great with the kids." He has his own apartment and appears to be acting in a pro-social, law abiding fashion. He seems to be internalizing the changes necessary to continue on this positive turn in his life. As a result of the postive manner in which he has responded, Salvaryn has recently agreed to a increase in the curfew hours.

The Division noted in its examination of Mr. Crumble the mitigating and aggravating factors noted by the sentencing judges in the three criminal matters which resulted in Crumble's convictions. An examination of these shows that the sentencing judge on the first indictment, that is, the gun possession charge, noted many mitigating factors quite frequently found with respect to first offenders and only one aggravating factor, that is being "the need for deterring the defendant and others from violating the law. By the time of the second conviction, Judge Greenberg found no mitigating factors and found aggravating factors "the extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted" and "the need for deterring the defendant and others from violating the law." At the time of the third sentence, on the second drug distribution charge in January 1988, Judge Guerrera noted no mitigating factors and such aggravating as "the risk that the defendant will commit another crime"

"the extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted" and "the need for deterring the defendant and others from violating the law." Judge Guerrera noted in his reasons for sentencing that "the serious nature of this offense, together with the defendant's prior criminal record, clearly dictate that a substantial state prison sentence be imposed. There are no mitigating factors in this case . . ."

DISCUSSION AND ANALYSIS

This case presents significant difficulties. Mr. Crumble is an individual who has demonstrated by his past criminal involvements a substantial disregard for the interest of society by engaging in an extremely heinous and despicable mode of conduct, that is, the selling of cocaine and heroin. Clearly, Judge Guerrera's comments at the time of the January 1988 sentencing were completely appropriate and Crumble deserved to be sent away to prison. The fact that, according to his testimony, he was making no profit on sales, but was instead using the drugs to buy the drugs that he was himself using constitute no real excuse for his conduct, which besides providing him with a means for purchasing his own supply of drugs endangered the health, safety and welfare of many others through his distribution of narcotics to other individuals.

As this judge noted at the time of the hearing, had Mr. Crumble only been convicted on the gun offense and the 1985 drug distribution charge and had he come to court and presented the type of rehabilitative testimony which was received from Cirillo, Marsh, Salvaryn and himself, indicating the kind of changed conduct which he has demonstrated, but over a substantially longer period of time, that is, from 1985 or so up to the present instead of only from last June, there would be little question but that a finding of rehabilitation would be absolutely appropriate. The testimony presented by the respondent's witnesses, as well as his own apparently sincere testimony, all indicate that Mr. Crumble has begun to see the light, begun to change his ways, and begun to turn his life around. The unfortunate thing in his case is that between 1985 and 1988 he continued to use drugs and sell them and was arrested and convicted for another drug sale. This complicates a determination of this matter considerably.

I am highly impressed with the nature of Mr. Crumble's rehabilitation evidence. As the Deputy Attorney General noted, and as this judge fully concurs, few individuals

who have come before this judge have presented such a compelling case of one who has apparently reformed. If Crumble is to be believed, and I sincerely believe that he means it, his prison sentence woke him up, his return to society and undertaking of responsibilities for his family, his employment, his growing sense of responsibility and independence resulting from taking on his own home, etc., have all combined to fix upon him the need to straighten his life out. I believe that he is quite well on his way to doing so and suspect, as Mr. Salvaryn indicates, that he has internalized a different set of outlooks and attitudes. The conduct which he has engaged in with Mr. Marsh, his willingness to go beyond the requirements of his Intensive Supervision Program, his apparently sincere efforts to continue meeting with those assisting him and with the group which he is working with, all point in the right direction.

The ultimate question in this case is of course whether Mr. Crumble is rehabilitated. Based upon the evidence, I **FIND** that he did commit offenses in 1985 and 1987 which constituted crimes which are automatic disqualifications from registration pursuant to section 86c(1), that is, sale of a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1) and the later adopted 2C:35-5a(1) and 2C:35-5b(3). Thus, in order for him to retain his registration, it must be found that he has rehabilitated himself by clear and convincing evidence, as required by the statute.

Mr. Crumble's last criminal conviction occurred almost exactly one year ago. The offense itself occurred in August 1987, nearly one year and one-half ago. According to his testimony, he has been off drugs since December 1987, 13 months ago. He has been out of prison since May, on intensive supervision since then and working since early June. All of these have occurred within a relatively recent time. The issue is whether one can establish rehabilitation by clear and convincing evidence in such a limited period.

The Casino Control Act establishes standards for determining rehabilitation. Among these are the nature of the offense involved which disqualifies from registration, in this case the quite serious offense of possession with intent to distribute heroin and cocaine. A further factor is the age of the miscreant. In this case, the last offense, that of August 1987 resulting in the January 1988 conviction, occurred when Crumble was approximately 25. Again, the last offense occurred only one year and one-half ago and a conviction only one year ago and the prior offense to that, the other disqualifying offense, occurred in 1985. There is no specific evidence of the social factors which may have

played a part in Crumble's downfall, except that he did indicate that he was running with street gangs, that he was living at home without substantial employment, that he was not really responsible for his own financial wellbeing and therefore perhaps lacked some sense of responsibility and incentive, and that he eventually became involved with using and "hooked on drugs."

In addition to the above factors, the Act provides for some consideration in the nature of the employment. In this case, Mr. Crumble is employed at present time as a traffic coordinator and, if he were to continue as a registrant, it appears that he would be promoted to a car jockey, that is, one who actually parks the cars at the casino complex. This type of position is generally of a relatively low level in the casino industry hierarchy. While no doubt the ability to drive around customers automobiles could provide some sought of temptation, there is no real reason except speculation to think that this employment in any way is likely to be a problem with respect Crumble's prior criminal activities. In addition, the job is totally unrelated to the activities of the casino itself, hence the registration status as opposed to a casino employee license.

Having considered all of the factors which enter into a determination of whether or not one has rehabilitated himself including the significant standard that is established by the Casino Control Act, I **CONCLUDE** that Mr. Crumble, while well on the way to proving himself rehabilitated if he can continue on the present path, has not as of yet been able to have sufficient time within which to prove his rehabilitation from the most recent of his criminal involvements. Of course, it can be said that he had the opportunity to prove himself rehabilitated by leading an exemplory life since the 1985 conviction, although not then facing the revocation of his registration. Obviously, he failed to do that, whether because of drug use or not. He has been given another chance. This time it appears quite possible that he will in fact make it, that he will in fact prove himself a changed person. However, given the high standards set by the Casino Control Act with respect to the showing of rehabilitation and the limited time involved, I cannot in good conscience find at this point that the evidence so overwhelmingly establishes Crumble's change as to allow for a finding of rehabilitation. At the same time, I do not wish in the slightest to denigrate the efforts he has made, the progress he has shown, or the strong anticipation that he will succeed. For this reason, and because this decision must by law fully dispose of all issues relevant under the applicable statute to the question at bar, N.J.S.A. 52:14B-10(c), , I believe it appropriate to express strongly the opinion that

despite a finding of a failure on the part of Mr. Crumble to show sufficient rehabilitation to overcome the automatic disqualification, that he should be permitted to retain his registration in the interests of justice, N.J.S.A. 5:12-91(e). Although I recognize that the ultimate determination in this matter, particularly on this subject of a waiver of disqualification, is in the hands of the Commission, so that there be no question as to this issue should for some unknown reason the Commission not review this decision, and because I feel compelled by the requirement to issue a full and complete decision considering all statutory provisions relevant to this case, I **CONCLUDE** that a waiver should issue and Mr. Crumble should be permitted to retain his registration. While these last comments may be viewed by the Commission more as a recommendation on a subject which has apparently been traditionally viewed as reserved for it, I feel constrained to make the recommendation clearly in this decision, so as to completely fulfill the responsibility to fully and completely dispose of this case.

SUMMARY

For the reasons expressed, I **FIND** that Mr. Crumble has been convicted of disqualifying offenses and has failed to establish by clear and convincing evidence at this early date his rehabilitation to a level sufficient to permit him to retain his registration. However, for the reasons expressed, I believe that a waiver of the revocation should issue and that he should be permitted to retain his registration. Obviously, this extraordinary remedy in his behalf demands from him an extraordinary effort to justify the retention of his registration.

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

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

January 27, 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/31/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 1 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment 85-08-1277-B, filed August 13, 1985

P-2 Judgement Of Conviction And Order For Commitment, with attached sentence work sheet, reference: Indictment 85-08-1277-B

P-3 Indictment 87-09-1730D, filed September 17, 1987

P-4 Order for Commitment, reference: Indictment 87-09-1730-D

P-5 Indictment 5-599-83-B, filed May 26, 1983

P-6 Judgement For Conviction And Order For Commitment on Indictment 5-599-83

On behalf of respondent:

R-1 Showboat Employee Performance Appraisal, Review Date September 3, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-78
APPLICATION NO. 63343-21
OAL DOCKET NO. CCC 8921-86
ORDER NO. 89-10-12

APPLICATION OF MARY B. CULLEN

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 8, 1989,

IT IS on this 10th day of March 1989, ORDERED that the initial decision is adopted; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8921-86

AGENCY DKT. NO. 87-EA-78

MARY B. CULLEN,

Petitioner,

v.

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

Respondent.

J. Michael Farrell, Esq., for petitioner

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

Record Closed: January 4, 1989 Decided: January 11, 1989

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

Mary Barbara Cullen filed an application seeking licensure as a casino employee. The application was first filed in 1984. The Division of Gaming Enforcement objected to licensure by letter dated October 20, 1986. The applicant requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case on December 23, 1986. A prehearing was held before Honorable Stephen W. Thompson on February 10, 1987, and a Prehearing Order was issued on that date. Thereafter, at the request of the petitioner, the matter was placed on the inactive list, initially on April 20, 1987, and was carried on that list until it was activated and scheduled for hearing before Administrative Law Judge Jeff S. Masin on November 15, 1988, at the Oakland Municipal Building. Following the hearing, the record was kept open for the submission of additional documentation which was received on January 4, 1989, and the record closed on that date.

The Division objected to licensure because Ms. Cullen had allegedly failed to disclose an arrest on August 5, 1984, on her Personal History Disclosure Form and during a personal interview. In addition, she did not disclose four arrests which took place in 1968. She further failed to disclose that she had been dismissed from employment at Keystone Race Track in Pennsylvania and suspended by the Racing Commission following an incident of November 20, 1981, when certain narcotics and narcotic paraphernalia were discovered during a search conducted by race track security personnel. The Division contended that the failure to disclose disqualified Ms. Cullen pursuant to N.J.S.A. 5:12-86b and that in addition she lacked the good character, honesty and integrity required for licensure by N.J.S.A. 5:12-90b, incorporating 89b(2).

Mary Barbara Cullen, who is 38 years old and an eleventh grade high school dropout, testified that she began employment as a waitress and bartender in 1968. She began dating the president of the Henchman Motorcycle Club and was in his company constantly. On several occasions in 1968, she was involved with the police as a result of her involvement with this person. He, and she in his company, walked out on checks in restaurants, trespassed at a quarry, broke into a motorcycle shop and had guns on their property. As a result, Ms. Cullen was arrested on August 6, 1968, by the Vineland Police Department for theft of services, analogous to N.J.S.A. 2C:20-8; was arrested by the Vineland Police on August 16, 1968 for breaking and entering and larceny, analogous to N.J.S.A. 2C:18-1 and 2C:20-3; was arrested by the State Police for possession of a deadly weapon in violation of N.J.S.A. 2C:39-5 and disorderly conduct, N.J.S.A. 2C:33-2. She was sentenced to 30 days in the Cumberland County Jail on the theft of services charges, was indicted by the Cumberland County Grand Jury on the B and E and larceny charges and was fined $100 and given a three-month suspended sentence, and was fined $50 and $10 costs on the disorderly persons offense after the deadly weapons charge was dismissed.

Ms. Cullen testified that she began working as a pony girl at Liberty Bell (Keystone) Race Track in 1978. She began dating the father of her son, one William Shiff. She was suspended in November 1981. She was living with Shiff in Pennsylvania and they would go to work together at 6 a.m. He would drop her off and go up to the barn. She would use the car to go to the kitchen to get coffee for Shiff, a trainer and herself. One morning the race track security people conducted a drug search and found a straw in the car. There was some white powder under the seat. She was arrested. She and Shiff were

using drugs at the time, but she did not know that the items in the car had been there. She left Shiff and moved home with her mother. She told the police that the straw had been cut by her baby.

In 1984, Ms. Cullen was arrested by the Division of Alcoholic Beverage Control (ABC) for serving an underage person, in violation of N.J.S.A. 33:1-77. She was then tending bar at the Landing Strip in Pleasantville. She was fined $100 in Pleasantville Municipal Court, plus $25 court cost and $25 to the Violent Crimes Compensation Board.

In September 1985, Ms. Cullen filled out an application for licensure. She went over the Personal History Disclosure Form with a Kenneth Lipton, an individual who was helping casino applicants fill out PHD forms. She told Lipton about her arrests, but he told her that she did not have to put them down. She also explained that she believed that she had received an expungement of her record. This was not a correct assumption. She did disclose her 1984 arrest by the ABC. She put down nothing concerning the Keystone incident because Lipton told her she did not have to put it down. According to Cullen, she thought that the entire incident in Pennsylvania had been cleared up by an attorney who her trainer had retained for her and who she had paid out of her wages. She only met this attorney on three occasions.

On February 10, 1987, Ms. Cullen came to the Atlantic County Civil Courthouse in Atlantic City for a prehearing conference on this matter. She had worked that morning until 3 a.m. at the French Quarter on Admiral Wilson Boulevard in Camden where she was employed as a dancer. She had borrowed a pocketbook from her girlfriend. As she went through security at the courthouse, she was found to be in possession of a pipe which contained some residue and she was arrested.

Ms. Cullen eventually recognized that she had a substance abuse problem following her arrest at the courthouse on February 10, 1987. In June 1987, she entered into treatment under the care of a psychiatrist, Dr. George. She was in a hospital for approximately one month in September and continued treatment thereafter. She continues treatment with Dr. George and a counselor who she sees once every two months or as needed. She believes that she needs a chance to straighten out her life. She presently lives with her mother.

The applicant is currently employed at the French Quarter as a relief bartender and dancer. She has worked there for approximately one year on an on-and-off basis, also working at various other bars as a dancer. She claims that she has not used any drugs in the last four or five months. She acknowledged having been arrested in Absecon in November 1986 for possession of methamphetamine. She claimed that these were not her drugs but that a girlfriend "blamed it on her." She received pretrial intervention in January 1987 and was required to undergo urine testing three times in six months and perform 30 hours of community service in Vineland. She successfully completed this, although it was necessary to extend the supervision beyond its expected March 1987 end because she had not had all of the urine analyses and complete the community service. She was kept on probation until August 1987. She continues community service at the present time.

The witness explained that she started using drugs in 1977, using Quaaludes, marijuana and methamphetamines. She had given birth in 1977 and had severe complications which resulted in her being hospitalized for two and one-half months during which she nearly died due to infections. It was after this that she began her drug use. She did not at first use drugs while employed at the Atlantic City Race Track in 1978, but eventually started to use the drugs while working at the track on an on-and-off basis. These were always given to her by her son's father. She did not use cocaine because having tried it, she did not like it.

The applicant contended that when she filled out her application in September 1985, she was not then using drugs. However, when she was contacted by the Division's investigator by telephone and asked about her arrest record other than the 1984 incident which she had disclosed she lied to him and was "very rude." She "honestly thought that all of her record had been expunged." She felt that she should get an attorney because she knew that the prior record would jeopardize her chances at receiving a license. At the time of her discussion with the investigator, she had been using speed and had used it that night.

Ms. Cullen receives guidance through the Cumberland County Guidance Center. She no longer uses drugs and rarely takes any medication, even aspirin. She has been given a minor tranquilizer to induce sleep, but does not use it very often. She acknowledged that at the time of her arrest at the courthouse in 1987, she was using

methamphetamine, although the pipe was not hers. She continued to use meth up until the time that she went into the hospital when she turned drugs over to her doctor. She has not used any drugs for the past year.

Dorothy Cullen, the petitioner's mother who is an employer of the Department of Military and Veteran's Affairs for the State of New Jersey, testified concerning her daughter's difficult pregnancy and subsequent illness. She testified that she and her boyfriend had worked with Mary to try to turn her around and that she would "turn her in if she thought she was on any drugs." She and her daughter do volunteer work together at the Veterans Home in Vineland and for the Vineland Developmental Center. She believes that her daughter has come a long way despite the difficulties which she has suffered from the severe illness and with her son, who has been in special education. Mrs. Cullen denied having known that her daughter was on drugs.

Several documents were received in evidence. Among these was a dismissal of the appeal which Ms. Cullen had filed with respect to her suspension by the Pennsylvania State Horse Racing Commission. This dismissal occurred on October 5, 1984, following a "failure to respond to the Rule to Show Cause" issued by the court in 1982. In addition, Ms. Cullen presented a statement of March 15, 1988, from Elizabeth Rodriguez, a therapist at the Cumberland County Guidance Center, who indicated that Mary's present condition was "improved in the ability to handle the activities of daily living, and the ability to use public transportation, and the ability to function at home, in the ability to relate to the family and others and improved in the ability to take care of her son and to maintain employment. She further indicated that Cullen is not "considered a danger to self, others, or property." Her prognosis was seen as good and she was encouraged to continue with psychotheraputic counseling on an outpatient basis.

Dr. N.J. George, staff psychiatrist at the Guidance Center, wrote on March 18, 1988 that as of that time, Ms. Cullen was not using drugs. "I feel she would stay off of them."

DISCUSSION

This case involves an applicant with a history of drug abuse which has continued up to the fairly recent past. She has undergone intensive treatment in an effort to break out of the cycle of drug involvement. It appears that she is making significant progress.

Ms. Cullen's 1968 arrests would be insignificant except for the fact that they were not disclosed on the Personal History Disclosure Form. According to her explanation, she did not disclose them because Mr. Lipton told her she did not have to. Of course, her statements as to Lipton's comments are hearsay and they are unsupported by any testimony or other evidence from him. As a matter of fact, it would have been necessary for Ms. Cullen to have disclosed these 1968 arrests, although at this late date, it is unlikely that any of them could have disqualified her from licensure. She did disclose a 1984 ABC arrest. That arrest, for selling alcohol to a minor, was of a relatively insignificant nature. It may well be that in reviewing the matter, Ms. Cullen felt that that arrest was very recent, was likely to be discovered, and was not likely to jeopardize her licensure, whereas the prior arrest, which involved such serious matters as breaking and entering and larceny and jail sentences, could hamper her licensure. She readily acknowledged that she felt that the arrests might jeopardize her ability to obtain a license.

Ms. Cullen's explanation of why she did not put down the 1968 arrests does not ring entirely true. While it is possible that she may have consulted with someone and discussed with him whether to list the arrests, she has produced no evidence to support her self-serving testimony that she was told not to put them down. Her own testimony, indicating her concern that the arrests might jeopardize her ability to obtain a license, seemed to point to the more likely explanation that regardless of what advice she was given, she determined not to put down what she thought she might otherwise be required to list in the hope that it would not be discovered and would not jeopardize her chances. Of course, Ms. Cullen's judgment on the matter may have been clouded by her drug involvement, although she denied any specific involvement at the time of filling out of the application.

Ms. Cullen agreed that she lied to the Division investigator at the time he questioned her concerning her arrest record. She only disclosed the arrests when confronted with them. At the time, she claims to have been using drugs. Perhaps this affected her, although again it is perhaps difficult to separate out the affects of the drugs on her judgment as opposed to her own non-drug induced concerns that the revelation of the arrests would result in her not receiving a license.

The Division's objections in this case are based upon the good character issue and the failure to disclose. In the view of this judge, there was an intentional failure to disclose the 1968 arrests. Ms. Cullen was aware of the arrests, had not forgotten about them, and either on her own, or in agreement with some "counselor," determined not to list the arrests for fear that they would jeopardize her chances. I do not credit her explanation if it is intended to imply that she only followed Lipton's advice and did not independently determine that it would be better not to list the arrests because they might hurt her chances.

With respect to the good character, honesty and integrity issue, Ms. Cullen's prior history up until recently certainly gives no indication that she has the necessary good character, honesty and integrity for licensure. She is an admitted former drug user, lier, and a person who failed to disclose material information. All of this may have been in some respect induced by the drug activity. It is unfortunate that Ms. Cullen's history, up to the recent past, is clouded by these misjudgments and inappropriate conduct. However, in dealing with the question of whether she has established by clear and convincing evidence the good character, honesty and integrity required for licensure, I **FIND** that it is too soon to determine that Ms. Cullen has changed herself around so much as to overcome the unfortunate difficulties of the past. Within the past year she has purportedly stopped using drugs and has pursued a fairly intensive program of rehabilitation. Hopefully, this will continue and in the future she can point to a clear record of non-involvement with the law and no drug involvement for a period of years. However at present, I **FIND** that it is too soon to make the determination that good character, honesty and integrity exists to such a degree as to overcome the past problems. In judging the present existence of good character, honesty and integrity, the recent past must be looked at. That recent past cannot be limited solely to what has occurred since Ms. Cullen's hospitalization and "rehabilitation." It is simply too soon to make any judgment on whether this individual, who has been troubled for years with a drug problem, has emerged from the shadows and can go on without difficulty.

I **CONCLUDE** that Ms. Cullen did intentionally fail to disclose material information concerning her arrest and conviction record in violation of N.J.S.A. 5:12-86b. In addition, I **FIND** that she cannot at this point prove her good character, honesty and integrity by the requisite clear and convincing evidence standard set forth in N.J.S.A. 5:12-90b, incorporating 89b(2). For these reasons, I **CONCLUDE** that at the present time

Ms. Cullen cannot be licensed and her application must be denied. Her future ability to obtain a license will no doubt be dependent upon a continued record of a drug free and law abiding lifestyle. In the case of this applicant, there is at least hope for the future. However, at present, that hope is an insufficient ground for a finding of license qualification.

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

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

DATE — **JEFF S. MASIN**, ALJ

Receipt Acknowledged:

1-12-89
DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

January 13 1989
DATE — OFFICE OF ADMINISTRATIVE LAW

ds

EXHIBT LIST

Joint Exhibit:

J-1 United States Department of Justice, Federal Bureau of Investigation Master Criminal Record Sheet

On behalf of petitioner:

P-1 Order of Pennsylvania State Horse Racing Commission, dated February 26, 1982

P-2 Order of Commonwealth Court of Pennsylvania, dated May 30, 1984

P-3 Order of Pennsylvania State Horse Racing Commission, dated October 5, 1984

P-4 Letter of March 15, 1988, from Elizabeth Rodriguez

P-5 Letter of March 18, 1988, from N.J. George, MD

P-6 Authorization for Release of Information and attached medical records of Bridgeton Hospital Association, reference: Hospitalization of Mary Cullen, admission dated September 27, 1987

P-7 Package of documents relating to PTI Program and Dismissal Order under Rule 3:28

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-193
OAL DOCKET NO. CCC 966-88
REGISTRATION NO. 69732-40
ORDER NO. 89-4-3

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

Complainant, :

: ORDER

v.

PATRICIA DAISEY, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 25, 1989,

IT IS on this 27th day of January 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 966-88
AGENCY DKT. NO. 88-193

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
PATRICIA DAISEY,
Respondent.

Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Barry J. Beran, Esq., for the respondent (Beran & Beran, attorneys)

Record Closed: December 7, 1988 Decided: December 9, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Patricia Daisey's casino hotel employee registration no. 69732-40 pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by

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reason of its contention that the respondent had committed a disqualifying offense under section 86c(1), and therefore, she is disqualified from registration, pursuant to section 91b. The respondent contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so that she could be employed as a food and beverage cashier and, later, a cash control supervisor. By complaint to the Commission, filed January 7, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had committed Theft by Deception (welfare fraud), in violation of N.J.S.A. 2C:20-4, under section 86c(1). Based upon the complaint, the Commission notified the respondent on January 19, 1988, that she had the right to a hearing, and that failure to respond within 15 days could result in revocation of her registration. By application dated January 22, 1988, which was received by the Commission on February 2, 1988, the respondent requested a hearing. On February 4, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on February 11, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before me on April 18, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-4.

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was scheduled for July 29, 1988. On July 20, 1988, the respondent's attorney telephoned my office and requested an adjournment of the hearing date as he had just recently been retained by the respondent. This request was confirmed in writing on July 28, 1988, and I granted the respondent's request for an adjournment.

A hearing was held on November 10, 1988, in the Municipal Courtroom, Deptford Township Municipal Building, Deptford Township, New Jersey. The record remained open at the conclusion of the hearing in order to afford both parties the opportunity to submit

additional documentary evidence and to submit additional rebuttal evidence. I received this additional documentary evidence on December 7, 1988 and the record closed at that time.

THE FACTS

In April or May 1983, the respondent and her husband applied for and were granted assistance (welfare) in the form of Aid to Families with Dependent Children (AFDC), Medicaid and Food Stamps (F.S.) from the Camden County Board of Social Services (CWA). Between July 16, 1983, and April 28, 1984, the respondent worked sporadically in various positions at Underwood Memorial Hospital (P-3). Between December 9, 1983, and May 18, 1984, the respondent's husband worked for Coast Cities Student Transport Company (P-3). At no time did the respondent or her husband report this employment to the CWA. On December 15, 1983, the respondent and her husband completed a recertification application for assistance (P-2). In this application, the respondent and her husband indicated that they were both unemployed and had no source of income (P-2). Between July 16, 1983, and May 31, 1984, the respondent received over payments of $3,758 in AFDC, $4,418.83 in Medicaid and $818 in F.S., for a total overpayment of $8,994.83 to which she was not entitled (P-3).

On November 21, 1986, the respondent and her husband were indicted by the grand jury, Superior Court of New Jersey, Law Division, Camden County - Criminal, in indictment number I-2736-11-86, for theft by deception (welfare fraud) in the amount of $8,994.83 in violation of N.J.S.A. 2C:20-4. On December 11, 1986, the respondent entered a plea of not guilty to the charge; however, on March 2, 1987, the respondent retracted her plea of not guilty and entered a plea of guilty to the charge. On April 3, 1987, the respondent was found guilty of the charge and was sentenced in the Superior Court of New Jersey, Camden County, to serve three years on probation, perform 150 hours of community service at the rate of 50 hours per year, make restitution and pay a $25 Violent Crimes Compensation Board Penalty (P-1).

During and just prior to the time period in question, the respondent incurred approximately $10,000 in medical bills ($4,418.83 were paid by Medicaid). Her husband had surgery to have a vein stripped, her son Michael severely fractured his leg and was hospitalized for 30 days, her son Christopher severed a finger and was hospitalized at Jefferson Hospital for microsurgery, and the respondent was hospitalized for tonsillitis.

Neither the respondent nor her husband had any medical insurance to pay these bills. In addition, the respondent was behind in paying her mortgage, gas and electric bills and often could not afford food for her children.

A friend, aware of the respondent's dire financial situation, obtained a part-time job for the respondent at Underwood Memorial Hospital. Because of her financial situation, her outstanding medical bills and her need to feed her children, the respondent did not inform the CWA of her employment.

On December 15, 1983, when the respondent recertified her application for assistance, the respondent was going to inform the CWA of her employment. However, earlier that day, her electricity was shut off for nonpayment and the respondent was scared, so she indicated that she was not employed. The respondent testified that, at that time, she did not realize the seriousness of her offense but she did realize that she had an obligation to inform the CWA of her employment.

Early in 1984, the respondent filed for bankruptcy under Chapter 13 in an attempt to consolidate and repay her debts. This application, however, was denied because the respondent's income was insufficient to repay her debts within five years. The respondent therefore filed a petition for straight bankruptcy under Chapter 7. This petition was granted on April 18, 1984.

In March 1984, the mortgage holder foreclosed on the respondent's home. The respondent lost her home and had to split up her family in order to find shelter. She, her husband and her two younger children, ages three and four, moved in with her sister, and her two older children, ages nine and eleven, moved in with her parents.

The respondent was born on February 18, 1954. She is presently 34 years old and was 29 and 30 years old at the time of the offense. She is married and has four children, ages 16, 14, 9 and 7. She had her first child at age 18 and did not work before she was employed at Underwood Hospital in 1983. Since coming off welfare, the respondent has been continuously employed. After leaving the hospital, the respondent was employed for one and one-half years by the New Jersey National Bank as a branch service representative. She processed loan applications and served as a teller. In August 1986, the respondent became employed at the Claridge Hotel and Casino as a food and beverage cashier. In June 1987, the respondent left the Claridge to accept employment in

the Sands Hotel and Casino as a cash control supervisor. In this position, the respondent is the swing-shift supervisor overseeing three clerks and 21 food and beverage cashiers. She is not directly responsible for any bank but does occasionally run change to cashiers.

There were no disciplinary actions filed against the respondent at the Claridge. The respondent has had one disciplinary action - - a warning for attendance - - since she has been employed at the Sands. In that instance, the respondent was working the swing-shift. The day shift supervisor left on maternity leave and the respondent was required to cover for her. As a result, the respondent was sometimes working both the day shift and the swing shift, and thus was late several times reporting to work on the day shift. She also had the flu during this period. Since returning to the swing shift, she has experienced no other attendance or disciplinary problems.

The respondent did disclose her arrest and conviction on her Personal History Disclosure Form, which was filed with the Commission and the Division on August 11, 1986. The respondent did not, however, disclose her arrest and conviction on her Sands employment application (P-7) dated June 8, 1987. When questioned by the Division, the respondent indicated that she did not realize she was "formally arrested," but offered to redo the application. She was informed by the Division investigator that that would not be necessary. The respondent wanted to put her past behind her and was afraid that if she reported the conviction she would not get the job. The respondent has since informed all of her superiors of her conviction. The Sands could have terminated the respondent for falsifying her employment application but it elected to retain the respondent as she has proven herself to be a trusted employee and a valuable asset to the Sands.

The respondent is still on probation. She reports to her probation officer every month. She has completed her first 50 hours of community service by working at St Mary's Church in Williamstown. The respondent was originally required to pay $30 per month in restitution; however, at one point this was raised to $250 per month. The respondent was unable to pay $250 per month and a violation of probation proceeding was begun. On December 18, 1987, the petition was dismissed and the respondent's restitution was reduced to $100 per month (P-5). A second violation of probation proceeding was begun in May 1988, as the respondent had not completed paying her arrearage; however, the petitioner completed paying the arrearage and the petition was dismissed (P-5). The respondent has paid $1,853.00 in restitution and has a balance of $7,141.83 (P-8).

The respondent is active in the local PTA and youth soccer organization. She also attends church regularly.

The respondent submitted five documents in her behalf. Three are letters of recommendation (R-1, R-2 & R-5) and two are excellent semi-annual job performance evaluations (R-3 & R-4). The first letter is written by Barbara Perkins, Income Control Supervisor, Sands Hotel and Casino, and dated November 7, 1988. Ms. Perkins wrote:

> Pat Daisey has proven to be an exceptional cash control supervisor. She has consistently worked very effectively with the clerks and cashiers in her department. On numerous occasions, I have worked with Pat at the Sands, in the Copa Room or one of the restaurants. She is hard working, reliable, and a very knowledgeable supervisor. She has earned the respect and trust of all her co-workers. She is a valuable asset to the hotel accounting department at the Sands.
>
> On a more personal level, Pat is a compassionate and patient individual. She is always pleasant and gets along well with her fellow employees. I have observed her in several situations, and she has shown herself to be level headed, responsible, and calm. I am proud to work with her, and I'm glad that I can call her my friend. [R-1]

The second letter, written by Amy L. Herring, cash control manager, Sands Hotel and Casino, dated November 5, 1988, states:

> Patricia Daisey has been employed as a Shift Supervisor with the Sands Hotel & Casino Cash Control Department since June 1987. During that time Pat has proven herself to be an extremely valuable asset to the department. Pat is well liked and highly respected amongst her peers and co-workers.
>
> Pat has full charge of the department in my absence. She is responsible for scheduling, overseeing that cashier tasks are performed, troubleshooting all problems that arise, and verifying the clerks work along with many other duties.
>
> Pat is very enjoyable to work with. She has a positive attitude and is an excellent role model. She is always willing to help out by staying overtime or even working on her days off. Since Pat works the busiest shift, her loss would have a very negative effect on the department. [R-2].

The third letter, written by John Ciullo, hotel controller, Sands Hotel and Casino, dated November 21, 1988, states:

> Pat Daisey has been employed as a Cash Control Shift Supervisor at the Sands Hotel & Casino since June 1987. During her employment, Pat has proven to be not only an excellent supervisor, but also a trustworthy and dedicated individual. I have found that Pat possesses a high degree of integrity and dependability as well as the ability to get along with people.
>
> I have known Pat personally for over a year, and I can state that her reputation and moral character can not be questioned. [R-5]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the respondent and holder of a casino hotel employee registration, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. In April or May 1983, the respondent and her husband applied for and were granted assistance (welfare) in the form of Aid to Families with Dependent Children, Medicaid and Food Stamps from the Camden County Board of Social Services.

2. Between July 16, 1983, and April 28, 1984, the respondent worked sporadically in various positions at Underwood Memorial Hospital.

3. Between December 9, 1983, and May 18, 1984, the respondent's husband worked for Coast Cities Student Transport Company.

4. At no time did the respondent or her husband report this employment to the Camden County Board of Social Services.

5. On December 15, 1983, the respondent and her husband completed a recertification application for assistance. In this application the respondent and her husband indicated that they were both unemployed and had no source of income.

6. Between July 16, 1983, and May 31, 1984, the respondent received overpayments of $3,758 in AFDC, $4,418.83 in Medicaid and $812 in F.S., for a total overpayment of $8,994.83 to which she was not entitled.

7. On November 21, 1986, the respondent and her husband were indicted by the grand jury, Superior Court of New Jersey, Law Division, Camden County - Criminal, indictment number I-2736-11-86, for theft by deception (welfare fraud) in the amount of $8,994.83, in violation of N.J.S.A. 2C:20-4.

8. On April 3, 1987, the respondent was found guilty of the charge and was sentenced in the Superior Court of New Jersey, Camden County, to serve three years on probation, perform 150 hours of community service at the rate of 50 hours per year, make restitution, and pay a $25 Violent Crimes Compensation Board Penalty.

9. During and just prior to the time period in question, the respondent incurred approximately $10,000 in medical bills.

10. The respondent was behind in paying her mortgage, gas and electric bills, and often could not afford food for her children.

11. On April 18, 1984, the respondent was entered into bankruptcy under the provisions of Chapter 7.

12. In March 1984, the respondent's mortgage holder foreclosed on her home.

13. The respondent had to split up her family.

14. The respondent was born on February 18, 1954. She is presently 34 years old and was 29 and 30 years of age at the time of the offense.

15. She is married and has four children, ages 16, 14, 9 and 7.

16. She had her first child at age 18 and did not work until she was employed at Underwood Hospital in 1983. Since coming off welfare, the respondent has been continuously employed.

17. The respondent is presently employed at the Sands Hotel and Casino as a cash control supervisor.

18. The respondent failed to disclose her arrest and conviction on her employment application, but she has subsequently informed her employer of her conviction.

19. The respondent has completed her first 50 hours of community service and has paid $1,853.00 in restitution.

20. The respondent is active in her local PTA and youth soccer organizations. She attends church regularly.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

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

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

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

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the

offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant. . ." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends that the respondent committed a violation of N.J.S.A. 2C:20-4, Theft by deception, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, she is disqualified from continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's receipt of welfare grants in excess of $500 between July 16, 1983, and May 31, 1984, while she and her husband were employed and thus not eligible for full grants, constitutes a violation of N.J.S.A. 2C:20-4, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-4, Theft by deception, provides in pertinent part:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The Division established, and the respondent admitted during her testimony, that she knowingly failed to inform the Camden County Board of Social Services of her or her husband's employment with the intent to deceive the CWA so as to receive welfare grants to which she was not entitled. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(a), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

In regard to the first criterion, Patrica Daisey is a casino hotel registrant employed as a cash control supervisor at the Sands Hotel and Casino. As such, she does not have direct responsibilities for actual gaming activities and rarely comes in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-4, theft by deception, over a ten-month period prior to being employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent and her husband were unemployed and in dire financial need. They had large medical bills, were behind in their mortgage, gas and electric bills, and often could not afford food for their children. The respondent took a part-time job as a means of attempting to provide for her family; however, she failed to inform the CWA of this income. Most of the overpayment was for medical expenses and food. At sentencing, the court noted several mitigating factors in this case: first, that the respondent's conduct neither caused nor threatened serious harm; second, that the respondent did not contemplate that her conduct would cause or threaten serious harm; third, that the respondent will compensate the victim of her conduct for the damage it sustained and that she will participate in a program of community service; fourth, that the respondent has no prior history of delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the offense; fifth, that the respondent's conduct was the result of circumstances unlikely to reoccur; sixth, that the character and the attitude of the respondent indicated that she is unlikely to commit another offense; seventh, that the respondent is particularly likely to respond affirmatively to probationary treatment; and eighth, that imprisonment would entail excessive hardship upon the respondent and her dependents. While the offense is serious, the underlying circumstances substantially mitigate the seriousness of the offense.

Fourth, the respondent's misconduct occurred between July 16, 1983, and May 31, 1984, when it ceased.

Fifth, the respondent was 29 and 30 years old at the time of the first offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, there were numerous social and financial conditions which contributed to this offense. She was under financial pressure and was experiencing emotional strain. As indicated above, the respondent had large medical bills and was

behind in her mortgage payments, as well as in her gas and electric bills. Her electricity was turned off on the day she recertified her eligibility in December, she lost her home in March, she was entered into bankruptcy in April, and her family had to be separated in order to find shelter. Numerous outside factors converged on her and impaired her ability to deal with this situation rationally. Her only concern was with providing food and shelter for her family.

Eighth, the respondent has made substantial rehabilitative efforts. While it has only been one and one-half years since the respondent was convicted and placed on probation, it has been four and one-half years since the misconduct terminated. Since coming off welfare, the respondent has been continuously employed in responsible positions. She was a branch service representative in a bank where she processed loan applications and also worked as a teller; she was a cashier at the Claridge and she is now a cash control supervisor at the Sands. She has performed admirably in the casino industry for the last two and one-half years, rising from a cashier to a supervisor in charge of three clerks and twenty-one cashiers. Her performance ratings are excellent. She is active in her local PTA and youth soccer organization and she regularly attends church. While she is still on probation, she has completed her first 50 hours of community service and has made restitution in the amount of $1, 853.00. She now makes regular restitution payments. She has a new home and her family has been reunited. She has admitted her misconduct and expressed sincere remorse. She has proven herself to be trustworthy and honest. She was forthright and candid. She is rehabilitated in her personal life and has grown and matured as a result of this incident.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I

> think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a cash control supervisor. She has no responsibility for any casino gaming activity, but does have some contact with casino patrons. Considering the nature of the position she holds, the respondent's work record in the industry, her demeanor and candor at the hearing, her dire financial situation at the time of the offense, the fact that she wrongfully obtained a grant from a county welfare agency, the isolated nature of her offense, her involvement in the community, her family status, her expressed remorse, her community service, her now-current payments of restitution and her overall efforts over the last four and one half years, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

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

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

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

December 9, 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

December 13, 1988
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 14 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Indictment and Judgment of Conviction

P-2 Recertification Application for AFDC, dated December 15, 1983

P-3 Report of Criminal Investigation from the Camden County Board of Social Services, dated July 30, 1986

P-4 Stipulated Judgment and Repayment Agreement, dated April 13, 1987

P-5 Petition for Violation of Probation, dated November 13, 1987 and May 13, 1988

P-6 Supplemental Summary Report by the Division of Gaming Enforcement, dated May 26, 1988

P-7 Sands Hotel and Casino Employment Application, dated June 8, 1987

P-8 Restitution amounts from Camden County Board of Social Services, dated December 6, 1988

For the Respondent:

R-1 Letter of Barbara Perkins, income control supervisor, Sands Hotel and Casino, dated November 7, 1988

R-2 Letter of Amy L. Herring, cash control manager, Sands Hotel and Casino, dated November 5, 1988

R-3 Respondent's employee evaluation for the period of June 9, 1987, to December 9, 1987

R-4 Respondent's employee evaluation for the period of December 10, 1987, to June 9, 1988

R-5 Letter of John Ciullo, hotel controller, Sands Hotel and Casino, dated November 21, 1988

WITNESSES

For the Petitioner:

Patricia Daisey, the respondent

For the Respondent:

Patricia Daisey, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-399 and 89-233
OAL DOCKET NO. CCC 5532-88
ORDER NO. 89-10-18

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	
GEORGE DAPPER, INC. AND GEORGE DAPPER,	ORDER
Respondents.	
and	
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	
GEORGE DAPPER, INC., RESORTS INTERNATIONAL HOTEL, INC., t/a RESORTS HOTEL & CASINO, TRUMP'S CASTLE ASSOCIATES, t/a TRUMP'S CASTLE CASINO HOTEL; ADAMAR OF NEW JERSEY, INC., t/a TROPWORLD CASINO AND ENTERTAINMENT RESORT; MARINA ASSOCIATES, t/a HARRAH's MARINA CASINO HOTEL,	
Respondents.	

A hearing having been held on Complaint No. 88-399 before the Office of Administrative Law (OAL); and an initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement (Division) having filed a

new complaint (No. 89-233) together with an application for a cease and desist order seeking to preclude further business between respondent George Dapper, Inc. and five casino licensees; and the Commission having considered the entire record of these proceedings at its public meeting of March 8, 1989,

IT IS on this 11th day of April 1989, ORDERED that the initial decision is rejected and this matter is hereby remanded to the OAL for further proceedings at which, without limitation, the following issues are to be considered:

(a) Did George Dapper act independently of the other owners of George Dapper, Inc. or employees of the company in committing the crimes for which he was indicted?

(b) Was the price at which George Dapper sold his shares in the company arrived at through arms length negotiations and does it represent a fair market value?

(c) Who is responsible for the day to day operations of the company and what is their experience, in light of the stipulation that, while he was president, George Dapper was responsible for the entire operation of the corporation and was solely responsible for its conduct?

IT IS FURTHER ORDERED that the ALJ shall make his ruling based upon whether George Dapper, Inc. has met its burden of proof that George Dapper has severed all ties to the company and is no longer in a position to influence its operations.

IT IS FURTHER ORDERED that complaint numbers 88-399 and 89-233 shall be consolidated for hearing, and that the application for a cease and desist order filed with complaint no. 89-233 is hereby dismissed with consent of the parties.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

480

FILED

JAN 4 1989

CASINO CONTROL COMMISSION
LEGAL DIVISION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5532-88

AGENCY DKT. NO. 88-399 and 89-233

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

Petitioner,

v.

GEORGE DAPPER, INC. AND GEORGE
DAPPER,

Respondents.

Julia McClure, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

John Cassese, Esq., for the respondent, George Dapper, Inc. (Adams, Cassese & Papp, attorneys)

George Dapper, the respondent, pro se

Record Closed: December 8, 1988 Decided: January 3, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of the respondent's vendor registration no. 17478, pursuant to N.J.S.A. 5:12-104 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's vendor registration by reason of its contention that the respondent had committed a disqualifying offense under section

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86c(1), by means of section 86g. The respondent did not contend that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent, George Dapper, Inc., had obtained a casino vendor registration from the Commission so it could operate bus charters to Atlantic City casinos. By complaint to the Commission, filed June 21, 1988, the Division objected to the respondent's continued registration, asserting that the respondent, George Dapper, who is the president and one-third owner of George Dapper, Inc., had committed the offense of misconduct by a corporate official, in violation of N.J.S.A. 2C:21-9c, and mail fraud, in violation of 18 U.S.C.A. §§1341 and 1342, which is analogous to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a, which are disqualifying offenses under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. Based upon the complaint, the Commission notified the respondents on June 23, 1988, that they had the right to a hearing, and that failure to respond within 15 days could result in the termination of all existing casino hotel agreements with the company and the prohibition from entering into new agreements between casino hotels and the company. By application dated July 6, 1988, which was received by the Commission on July 6, 1988, the respondents requested a hearing. On July 25, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on July 27, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Stephen W. Thompson on October 6, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent George Dapper was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2C:21-9(c), misconduct by a corporated [sic] official (third degree).

B. Whether respondent George Dapper committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: 18 U.S.C. 1341, 1342, mail fraud.

C. Whether George Dapper, individually, has severed any and all connections with George Dapper, Inc. If not, whether George Dapper,

Inc. should be disqualified from vendor registration pursuant to Section 86c(1).

A hearing was held on December 8, 1988, at the Office of Administrative Law, 9 Quakerbridge Plaza, Mercerville, New Jersey, after which the record was closed.

STIPULATED FACTS

The parties have prepared a Stipulation of Facts which is attached hereto. The Stipulation of Facts provides:

1. George I. Dapper plead guilty to Federal Information #88-134 on April 11, 1988, in U.S. District Court for mail fraud in violation of title 18 U.S.C. §§ 1341 and 1342.

2. George I. Dapper plead guilty to Accusation #122-4-88 in Middlesex County Superior Court on April 12, 1988 to Misconduct by a Corporate Official, Third Degree, in violation of N.J.S.A. 2C:21-9c.

3. George I. Dapper is awaiting sentence on January 17, 1989, before U.S. District Court Judge Marianne Trump Barry. The State sentencing date has not yet been set.

4. George I. Dapper during the operative time period contained in the State and Federal Complaints was president and chief operating officer of George Dapper, Inc. George Dapper, Inc. is a New Jersey corporation founded by George I. Dapper's father in 1931. It operated until 1985 as an exclusive school bus contractor. On September 4, 1985, the corporation filed a vendor registration form and commenced doing business with casinos. George I. Dapper was a one-third owner of the corporation along with his two sisters who each owned one-third. Their ownership position came from George Dapper, Sr. who turned over his one-hundred percent ownership of the corporation to his three children in 1975.

5. George I. Dapper was responsible for the entire operation of the corporation during the operative period of time in the State and Federal complaints. He made all decisions effecting [sic] the company and was solely responsible for its conduct. The criminal activity charged to Mr. Dapper consisted of mailing fraudulent vouchers for payment to a local school board and improper conduct as a corporate officer in dealing with a public official transportation coordinator.

6. George Dapper, Inc., was not charged in the three-year long investigation and no other employee past or present has been so charged.

7. George I. Dapper is 43 years of age, married with two children. He graduated from Parsons College, Iowa in 1967. He worked in the corporation with his father until 1975 at which time his father retired and he assumed operating control. The offenses complained of took place over a seven year period of time. Mr. Dapper has cooperated fully with Federal and State prosecutors and has aided said investigations.

8. No allegations in this matter involve Atlantic City casinos and/or Charter Buses to Altantic [sic] City.

9. On May 2, 1988, George I. Dapper resigned as president and chief operating officer of the corporation. On May 4, 1988, the corporation held a reorganization meeting and elected a new board of directors eliminating George I. Dapper. On July 1, 1988, the corporation and Mr. Dapper entered into a stock purchase agreement whereby the corporation purchased all of the shares of stock owned by Mr. Dapper for $800,000.00. On July 1, 1988, the corporation caused to be issued a note in furtherance of the stock redemption agreement providing for a ten-year payment of $9,288.72 per month at 7 percent interest commencing July 1, 1988 to Mr. Dapper. On the same date, Mr. Dapper executed an unqualified stock power tendering all of his right, title and interest to his stock and George Dapper, Inc., back to the corporation, thereby retiring his shares.

10. The State of New Jersey has no evidence to present that George I. Dapper is involved in the corporation at present other than by the connection occasioned by the note and buy out arrangements.

11. The guilty pleas to these criminal offenses disqualify George I. Dapper under section 86 of the Casino Control Act. The rehabilitation factors as contained in the Act and as applies to George I. Dapper at this time make the issue of rehabilitation premature.

12. The following enclosures are provided:

    a. copy of Federal Information number 88-134
    b. copy of Accusation #122-4-88 and attached plea bargain agreement
    c. copy of stock redemption agreement
    d. copy of promissory note
    e. copy of corporate minutes
    f. copy of resolution authorizing execution of note
    g. copy of resignation of George I. Dapper
    h. copy of two stock certificates front and back, issued to George I. Dapper and endorsed to corporation
    i. copy of vendor registration form

As I **FIND** that the above Stipulation of Facts was entered into freely, knowingly, intelligently and voluntarily, I accept the Stipulation of Facts and **FIND** all facts contained therein as **FACT.**

DISPUTED FACTS

George I. Dapper testified that he has cooperated with federal officials since August 1986, prior to his pleading guilty to all charges. He was originally scheduled to be sentenced a year ago; however, his sentencing has been delayed because of his cooperation with the government.

The respondent believes his conduct was disgraceful and that he made a stupid mistake. He is extremely remorseful, accepts full responsibility for his misconduct, believes his misconduct was shameful and he wishes he could erase it.

The respondent has been active in several community groups and charitable ventures. The respondent has donated buses to the Special Olympics and has donated wheelchairs to handicapped children. He volunteers to help emotionally disturbed children. He has been active in both little league and a softball league as an assistant coach.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent who has a now tangential interest in the respondent company, which is the holder of a casino vendor registration, he has an in direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects. As such, I **FIND** all of the above as **FACT.**

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:21-1 et seq. (forgery and fraudulent practices which constitute crimes of the second or third degree);
>
> N.J.S. 2C:21-4a (falsifying or tampering with records);
>
> . . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State....

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

> h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110

(C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual ... registrant." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his ... registration." The Division contends, by means of section 86g, that the respondent committed a violation of N.J.S.A. 2C:21-9c, misconduct by a corporate official (third degree), and a violation of 18 U.S.C.A. §§1341 and 1342, mail fraud, which is analogous to a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records, which constitute violations of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued registration.

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

Section 86g provides that an applicant will be disqualified from licensure or registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's acts of mailing fraudulent vouchers for payment to a local school board and obtaining bus parts and supplies belonging to the school board constitute violations of N.J.S.A. 2C:21-9c, 18 U.S.C.A. SS 1341 and 1342, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:21-9, Misconduct by corporate official, provides in pertinent part:

A person is guilty of a crime when:

. . .

> c. He purposely or knowingly uses, controls or operates a corporation for the furtherance or promotion of any criminal object.
>
> If the benefit derived from a violation of this section is $75,000.00, or more, the offender is guilty of a crime of the second degree. If the benefit derived exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. If the benefit derived is $1,000.00, or less, the offender is guilty of a crime of the fourth degree.

Between March 31, 1976 and June 30, 1984, George Dapper part owner of George Dapper, Inc., acting with the purpose to promote and facilitate the crime of misconduct by a corporate official and to obtain benefits for George Dapper, Inc., and himself, purposely or knowingly used, controlled and/or operated a corporation (George Dapper, Inc.) for the furtherance or promotion of a criminal object. The criminal object was that George Dapper engaged in a continuing course of conduct with James Dickinson, transportation coordinator of the Woodbridge Township Board of Education, whereby they agreed to commit theft of tires, bus parts and other merchandise from the Township of Woodbridge Board of Education.

This scheme consisted of two patterns of activity. The first was to unlawfully and directly remove tires and bus parts, for the use of George Dapper, Inc., from the inventory of those items maintained by the Township of Woodbridge Board of Education, over which James Dickinson maintained control. In return for Dickinson's complicity in this course of conduct George Dapper would direct George Dapper, Inc., to pay various monies to James Dickinson.

The second pattern of activity was for George Dapper to order bus parts and other merchandise from one of the Township of Woodbridge Board of Education suppliers, which items would then be delivered to George Dapper, Inc. The invoices, however, would be submitted by the supplier to the Township of Woodbridge Board of Education. As transportation coordinator for that entity, James Dickinson would receive and approve those false invoices. Again, in return for his complicity in the scheme, George Dapper would direct George Dapper, Inc., to pay various monies to James Dickinson.

As a result of this continuing course of conduct, various items belonging to the Township of Woodbridge Board of Education were unlawfully taken by George Dapper and George Dapper, Inc., with a benefit to George Dapper and George Dapper, Inc., in excess of $1,000.00, but less than $75,000.00.

The respondent, George Dapper, has been indicted for this misconduct and he has pleaded guilty to the indictment. Mr. Dapper is presently awaiting sentencing on this indictment.

The Division established and the respondent admitted that he knowingly operated the corporation in a manner to wrongfully obtain bus parts and supplies belonging to the Woodbridge Township Board of Education. Accordingly I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:21-9c. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:21-9, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent, George Dapper, is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent, George Dapper, is therefore disqualified from continued vendor registration, pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

18 U.S.C.A. §1341, Frauds and swindles, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . or procure for unlawful use any . . . obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C.A. §1342, Fictitious name or address, provides:

> Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

N.J.S.A. 2C:21-4, Falsifying or tampering with records, provides in pertinent part:

> a. Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

From at least as early as 1980 up to at least December 1984, the respondent, George Dapper, together with James Dickinson, knowingly and willfully devised a scheme and artifice to defraud the Woodbridge Township Board of Education of public funds.

It was a part of that scheme and artifice that George Dapper, with the knowledge and assistance of James Dickinson, would submit to the Board of Education invoices for payment for school bus transportation services that either were never rendered or were inflated. The total value of these invoices was at least $85,000. It was a further part of the scheme and artifice that James Dickinson would use his public position to insure that the Board of Education would pay the invoices to George Dapper, Inc. George Dapper would pay part of the money generated from the false or overstated invoices to James Dickinson for his personal use.

It was a further part of the scheme and artifice to defraud that George Dapper knowingly and willfully, for the purpose of executing the scheme and artifice, did cause to be delivered by mail according to the direction thereon certain mail matter: to wit, invoices mailed to the Board of Education and checks mailed from the Board of Education to respondent George Dapper.

In U.S. v. Smothers, 435 F. 2d 209, (7th Cir. 1970) cert. den. 91 S. Ct. 2208 (1971); the court held that mailings from the National Bank in Illinois to a Missouri bank including memorandum copies of bills of lading containing false representations were incident to scheme to defraud so as to support the defendant's conviction for mail fraud. In addition, in Bronzin v. U.S., 309 F. 2d 158 (8th Cir. 1962), the court held that a scheme which contemplates the sending of bills through the mails to persons not indebted to the sender and for the purpose of inducing them to part with money they do not owe is a fraudulent scheme within section 1341.

The Division established, and the respondent admitted during his testimony, that he knowingly mailed fraudulent vouchers for payment to the Woodbridge Township Board of Education. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes violations of 18 U.S.C.A. §§1341 and 1342. I further conclude that the offenses committed by the respondent in violation of 18 U.S.C.A. §§1341 and 1342 are analogous to offenses committed in violation of N.J.S.A. 2C:21-4a. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:21-4, the offense constitutes a crime of the fourth degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under section 86c(1). The respondent is therefore disqualified from vendor registration pursuant to N.J.S.A. 5:12-86c(1).

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

A licensee or registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

2. The nature and seriousness of the offense or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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

Section 90 applies to casino employees and section 91 applies to casino hotel employees. There is no statutory provision for rehabilitation applicable to a casino vendor. Similarly, there is no statutory provision for rehabilitation applicable to casino service industries. The Commission, however, has recently applied the rehabilitation criteria to a disqualification case under section 86c(2) involving a casino service industry. See In the Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License, dated September 1, 1988 (Agency Dkt. No. 87-CSI-10), OAL DKT. NO. CCC 2214-87. The Commission held "that the section 90h criteria are relevant in any case involving a licensee under the Act where section 86c(2) disqualification is at issue. Where the credential involved is not a license but a registration..., the nearly identical provisions of section 91d will be utilized." The Commission noted that in the initial decision, "the

ALJ essentially applied the 'inimical' analysis set forth in Resorts". The Commission then stated, "[a]lthough he did not specifically delineate an analysis of the rehabilitation criteria, a review of the eight enumerated criteria of section 90(h) in the context of this case demonstrates that his conclusion was correct." Id. at 10. Implicit in this statement and in the Commission's subsequent detailed examination of each of the eight enumerated criteria is the desirability of such a specific delineation by an ALJ in any case where section 86c(2) disqualification is at issue. While I find no Commission decision on this point, I infer from the Horizon Air case that if the rehabilitation criteria are to be referenced in determining a section 86c disqualifier based upon the misconduct of an owner of a casino service industry, these criteria should also be referenced in determining a section 86c disqualifier based upon the misconduct of the owner or of a principal of a casino vendor.

In regard to the first criterion, George Dapper, Inc., is a casino vendor operating a bus service. As such, it does not have direct responsibility for actual gaming activities but does come in contact with casino patrons.

Second, the respondent, George Dapper, committed misconduct by a corporate official, a violation of N.J.S.A. 2C:21-9c, and mail fraud, a violation of 18 U.S.C.A. §§1341 and 1342, which is analogous to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a, over an eight-year period while employed in the casino industry. Because the offenses are listed disqualifiers under section 86c(1), they are very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. George Dapper, along with the transportation coordinator for a local school district, wrongfully obtained property of the school district for George Dapper, Inc.'s use, and ordered parts from various suppliers for George Dapper, Inc.'s use while he wrongfully billed the school district for the parts. Reduced to its lowest terms, this is purely theft of public funds. As such, it is extremely serious.

Fourth, the respondent's misconduct was a continuing course of conduct occurring over an eight-year period. It ceased in 1984.

Fifth, the respondent was 31 years old at the time the misconduct started and was 39 years old when it ended. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

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

Eighth, the respondent has made some rehabilitative efforts. He cooperated fully with both federal and state law enforcement agencies. He has accepted full responsibility for his misconduct and is extremely remorseful. He has severed all contacts with the corporation. He has been active in several community groups and charitable ventures. He has donated buses to the Special Olympics and has donated wheelchairs to handicapped children. He volunteers to help emotionally disturbed children, and has been active in both little league and a softball league as an assistant coach. The respondent has yet to be sentenced for his misconduct and he stipulated in the Stipulation of Facts that the issue of rehabilitation is premature at this time. Therefore, after considering the respondent's entire character with specific reference to the above eight criteria, I **CONCLUDE** that the respondent, George Dapper has not established by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h or N.J.S.A. 5:12-91d.

(C) N.J.S.A. 5:12-104b

Section 104b of the Act provides that the Commission may review written or unwritten agreements concerning the realty of, or any business or person doing business with or on the premises of a casino licensee. Section 104b goes on to state:

> Any such agreement may be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the owners, officers, and directors of any enterprise involved in the agreement, which qualifications shall be reviewed according to the standards enumerated in section 86 of this act. If the commission disapproves such an agreement or the owners, officers, or directors of any enterprise involved therein, the commission may require its termination.

The Commission has promulgated N.J.A.C. 19:41-11.2 to implement this statutory directive. In accordance with Commission regulation N.J.A.C. 19:41-11.2(a), the Commission shall review casino licensee agreements as set forth in Section 104b of the

Act and thereafter make a finding as to the suitability of the business or persons to be involved or associated with the casino enterprises. Commission regulation N.J.A.C. 19:41-11.2 then provides in subsection (c) that if the Commission disapproves of an agreement with a casino licensee, the Commission may by directive require the termination of that agreement or association or pursue another remedy or combination of remedies as provided for in the Act or the regulations.

In this case, the Division alleges that George Dapper, Inc., should have its vendor registration revoked because George Dapper is disqualified from registration because he has committed disqualifying offenses under section 86 of the Act. It is well-settled that the character and responsibilty of a corporate entity can be judged only by the character and responsibility of its owners or managers — those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972). Thus, it is proper to evaluate George Dapper, Inc.'s qualifications for vendor registration based upon the character and responsibility of its owners, officers, directors and principal employees.

Prior to May 2, 1988, George Dapper was the president and chief operating officer of George Dapper, Inc. On May 2, 1988, George I. Dapper resigned as president and chief operating officer of the corporation. On May 4, 1988, the corporation held a reorganization meeting and elected a new board of directors eliminating George I. Dapper. On July 1, 1988, the corporation and Mr. Dapper entered into a stock purchase agreement whereby the corporation purchased all the shares of stock owned by Mr. Dapper for $800,000.00. On July 1, 1988, the corporation caused to be issued a note in furtherance of the stock redemption agreement providing for a ten-year payment of $9,288.72 per month at seven percent interest commencing July 1, 1988 to Mr. Dapper. On the same date, Mr. Dapper executed an unqualified stock power tendering all of his right, title and interest to his stock and George Dapper, Inc., back to the corporation, thereby retiring his shares. The Division has no evidence to present that George I. Dapper is involved in the corporation at present other than by the connection occasioned by the note and buy out arrangements.

In the third Trap Rock case, Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99 (App. Div. 1975), aff'd 69 N.J. 599 (1976), the Commissioner of Transportation sought to disqualify Trap Rock Industries from a bidding list based upon a federal indictment filed against the corporation. In that case, the court found that:

> It is clear from the record developed at the hearing below that the present owners and principals of Trap Rock were not personally involved in the activities which were the basis for the federal indictment against the corporation in May 1973. . . .None of these individuals was an officer of Trap Rock in 1969, the time of the events leading to the federal indictment. Id. at 106.

Based upon this finding, the court reversed the Commissioner's determination that the corporation lacked moral integrity. The court reasoned that:

> ...where, as here, corporate derelictions can be isolated and fixed to particular persons, the corporation's lack of moral responsibility in that situation should be synonymous with the moral defects of the responsible individuals. 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. Id. at 108.

In the instant case, George Dapper has sufficiently removed himself from the corporation. He is no longer in a position to dominate or influence the corporation's business activities. The alleged reasons for the corporation's disqualification can be isolated and fixed to one person. Neither the present owners and principals of George Dapper, Inc., nor any of its present employees were personally involved in the activities which were the basis for the state and federal indictments. The only connection between George Dapper and George Dapper, Inc. is the stock redemption agreement and the buy out arrangements. This is similar to the facts in Trap Rock. There the prior owner was given a promissory note as part of the buy out agreement. In case of a default, the former owner indicated he would sue on the promissory note and not try to recover his stock. The court concluded that in that case, the prior Commissioner's finding that the former owner was sufficiently removed from the corporation was substantiated by the evidence. The court further noted that the Commissioner had adequate power to take prompt remedial action in the event the prior owner attempted to reacquire ownership or control of the corporation. Similarly in this case Mr. Dapper has given up total control of and all ownership interest in the corporation. His former stock has been retired. The only possible connection with the corporation is that in case of default he may sue the corporation on the note. He does not intend to retake control of the corporation; however, if he does attempt to reacquire ownership or control of the corporation, the Commission may immediately disqualify the corporation from dealing with Atlantic City casinos.

Based upon the above, I **CONCLUDE** that George Dapper has severed any and all connections with George Dapper, Inc., and that accordingly George Dapper, Inc., is not disqualified from vendor registration pursuant to N.J.S.A. 5:12-104b.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent, George Dapper, is **SUSTAINED** and that he is disqualified from entering into any agreement with any casino located in Atlantic City. It is further **ORDERED** that any company which should hereafter employ George Dapper is hereby disqualified from entering into any agreement with any casino located in Atlantic City and any existing agreements between any such company and any casino located in Atlantic City will be immediately terminated unless, by further order of the Commission, George Dapper is deemed to be rehabilitated and the disqualification is lifted.

It is **ORDERED** that the complaint filed by the Division against the respondent, George Dapper, Inc., be **DISMISSED WITH PREJUDICE.**

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

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

January 3, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1/4/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1 Copy of Federal Information number 88-134

J-2 Copy of Middlesex County Accusation #122-4-88 and attached plea bargain agreement

J-3 Copy of stock redemption agreement, dated July 1, 1988

J-4 Copy of promissory note, dated July 1, 1988

J-5 Copy of corporate minutes, dated May 4, 1988

J-6 Copy of resolution authorizing execution of note, dated July 1, 1988

J-7 Copy of resignation of George I. Dapper, dated May 2, 1988

J-8a Copy of stock certificate front and back for two shares of stock, issued to George I. Dapper and endorsed to corporation, dated July 1, 1988

J-8b Copy of stock certificate front and back for 31 and one-third shares of stock, issued to George I. Dapper and endorsed to corporation, dated July 1, 1988

J-9 Copy of vendor registration form

For the Petitioner:

None

For the Respondent, George Dapper, Inc.:

None

For the Respondent, George Dapper:

None

WITNESSES

For the Petitioner:

None

For the Respondent, George Dapper, Inc.:

None

For the Respondent, George Dapper:

George Dapper, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-50 and
87-EA-265
OAL DOCKET NO. CCC 4744-87
REGISTRATION NO. 45104-40
APPLICATION NO. 68867-21
ORDER NO. 88-9-3

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	AMENDED ORDER
v.	:	
BLANCA LUZ ROGELES-HENAO a/k/a BLANCA L. DECASTRO AND GLORIA MARTINEZ,	:	
Respondent.	:	
and	:	
APPLICATION OF BLANCA LUZ ROGELES-HENAO a/k/a BLANCA L. DECASTRO AND GLORIA MARTINEZ FOR A CASINO EMPLOYEE LICENSE	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 21, 1988,

IT IS on this 10th day of February 1989, ORDERED that the initial decision is modified as follows:

> For the reasons stated on the record the Commission rejects the ALJ's determination that the applicant is disqualified for licensure as a casino employee.

IT IS FURTHER ORDERED that the application of Ms. DeCastro for a casino employee license is granted; and

IT IS FURTHER ORDERED that the complaint to revoke Ms. DeCastro's casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4744-87

AGENCY DKT. NOS. 87-EA-265 & 84-50

BLANCA L. DECASTRO, A/K/A
BLANCA LUZ ROGELES-HENAO,
A/K/A GLORIA MARTINEZ,
Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,
Respondent.

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

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

Record Closed: November 16, 1987 Decided: December 31, 1987

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

STATEMENT OF THE CASE

This matter concerns the application of Blanca L. DeCastro for licensure as a casino employee, permitting her to work in a casino as a blackjack dealer. By letter to the Casino Control Commission dated May 26, 1987, the Division of Gaming Enforcement objected to this application. This matter also concerns the amended complaint of the Division of Gaming Enforcement filed with the Commission on June 2, 1987, seeking revocation of Ms. DeCastro's casino hotel employee registration, based upon her plea of guilty on September 5, 1985, to knowingly and willfully representing a false social security

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number with intent to deceive, in violation of 42 U.S.C. §408(g)(2), comparable to N.J.S.A. 2C:21-4(a), falsifying or tampering with records. These are the issues to be resolved:

1. Should Ms. DeCastro's casino hotel employee registration be revoked and her application for a casino employee license be denied as a result of her 1985 conviction upon a plea of guilty to the offense of knowingly and willfully representing a false social security number with intent to receive, in violaton of 42 U.S.C. §408(g)(2), an offense comparable to N.J.S.A. 2C:21-4(a), falsifying or tampering with a public record, which is a statutory disqualifier under Section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Does Ms. DeCastro possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Section 89b(2) and 90b of the Act.

3. Has Ms. DeCastro, if convicted of an otherwise disqualifying offense, affirmatively established her rehabilitation, pursuant to Sections 90h and 91d of the Act.

4. Is Ms. DeCastro disqualified from licensure as a casino employee pursuant to Section 86b of the Casino Control Act by reason of her providing false and misleading information upon her Personal History Disclosure Form.

PROCEDURAL HISTORY

By letter dated June 30, 1987, Ms. DeCastro requested a hearing on all issues. On July 16, 1987, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 18, 1987, and the hearing was held on November 16, 1987. The record closed on that date.

FINDINGS OF FACT

The material facts are undisputed. Blanca L. DeCastro is 30 years old and she is the mother of two children. She married Anibal Leon DeCastro on October 14, 1983. Her birth name was Blanca Luz Rogeles, and her surname by a previous marriage was Garcia.

Ms. DeCastro entered the United States illegally from Colombia, South America in 1982. She testified that she stayed with a friend in North Bergen, New Jersey

for about two weeks before coming to live in Atlantic City. Her friend advised her that she would need a social security number in order to obtain employment. Ms. DeCastro paid her friend $100 for a social security card showing the name Gloria Martinez and the number 201-46-8196. It is undisputed that Ms. DeCastro used this false name and social security to obtain employment. She first worked at the Deauville Hotel as a housekeeper for about six months in 1982.

On December 28, 1982, Ms. DeCastro filed a Personal History Disclosure Form No. 4 with the Casino Control Commission using the name Gloria Martinez and the false social security number 201-46-8196. Ms. DeCastro testified candidly that she knew she was not using a valid social security number when she filed the Personal History Disclosure Form (Exhibit R-6) for her casino hotel employee registration. She was issued registration no. 45104-40 by the Casino Control Commission and she began employment as a kitchen utility worker at the Golden Nugget Casino Hotel on December 30, 1982.

Working as Gloria Martinez, Ms. DeCastro was considered to be an excellent employee by her supervisors at the Golden Nugget. In June 1984, she was transferred to the employee cafeteria at the Golden Nugget and she received a commendation for her performance (Exhibit P-1). Ms. DeCastro continued to work at the Golden Nugget until 1986. At that time, she found it necessary to return to Colombia when her mother was ill. Her employment at the Golden Nugget ended when her request for leave was denied. On June 8, 1987, the petitioner was hired in a kitchen utility position by the Tropicana Hotel and Casino. According to Timothy Leahy, Assistant Executive Steward, the petitioner has an excellent employment status with the Tropicana (Exhibit P-4). On April 9, 1985, while the petitioner was still employed by the Golden Nugget, a criminal complaint and warrant for arrest were against her in the United States District Court when a special agent with the Office of Inspector General of the United States Department of Health and Human Services charged the petitioner with violation of 42 U.S.C. §408(g)(2), falsely representing a social security account number to be her own (Exhibits R-1 and R-2). On May 9, 1985, the petitioner was charged in an indictment in the United States District Court with five counts in violation of the aformentioned provision of the United States Code (Exhibit R-3). The indictment alleged that the petitioner had knowingly and willfully and with intent to deceive falsely represented to Local 54 of the Hotel Employees and Restaurant Employees International Union, the New Jersey Division of Gaming Enforcement, the Golden Nugget Hotel and Casino, and the Internal Revenue Service that no. 201-46-8196

was the social security account number assigned to her by the Secretary of Health and Human Services, when she well knew that this was not the number assigned to her.

On September 4, 1985, the petitioner appeared with counsel in the United States District Court and entered a plea of guilty to the charge of falsely representing a social security number to be her own, on one count of the indictment (Exhibits R-4 and R-5). The petitioner was sentenced to imprisonment for a period of eight months, which sentence was suspended and she was placed on probation for a period of one year. The petitioner was also ordered to pay a fine of $3,000 at the direction of the probation department. Finally, counts 1, 2, 4 and 5 of the indictment were dismissed (Exhibit R-5).

It was the testimony of Ms. DeCastro that she was able to continue working at the Golden Nugget even after she had been arrested. She satisfactorily completed the conditions of her probationary sentence and she has paid her fine in full. It was the credible testimony of Ms. DeCastro that she has had no other arrests either before or after this incident.

In July 1986, the petitioner received her card as a legal United States resident. She subsequently applied for an obtained her own valid social security number, 141-80-4321, which appears on her Personal History Disclosure Form which she prepared pursuant to her application for a casino employee license in September 1986 (Exhibit R-9). Ms. DeCastro's husband, Anibal DeCastro, is not a United States citizen, but he is also a legal resident of the United States.

Ms. DeCastro candidly acknowledged that she had utilized the false social security number for about four years. She has subsequently given all interested parties her valid social security number. She attended and successfully completed blackjack dealer school at night, and because her spouse's schedule permitted it, she has split her child care responsibilities with him. Ms. DeCastro presently has a reputation as being a dependable person, who is honest and of excellent character (Exhibit P-3).

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

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualifications for licensure. Pursuant to Sections 89b(2) and 90b of the Act, an applicant for a casino employee license must demonstrate by clear and convincing evidence, her reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of certain enumerated statutes.

Pursuant to Section 1b(8) of the Casino Control Act, participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualification of the person seeking such privilege. N.J.S.A. 5:12-1b(8). Sections 91b and 129 of the Act authorize the revocation of the registration of any registrant who is disqualified on the basis of her conviction of any offense which is specifically listed under 86c of the Act.

On September 4, 1985, the petitioner was convicted upon her plea of guilty in the United States District Court of falsely representing a social security number to be her own, in violation of 42 U.S.C. §408(g)(2). This offense is comparable to N.J.S.A. 2C:21-4a, falsifying or tampering with records, which is an offense specifically enumerated as a disqualifier under Section 86c(1) of the Casino Control Act. Therefore, I **CONCLUDE** that the petitioner is subject to denial of her application for a casino employee license and revocation of her casino hotel employee registration on the basis of her conviction of a disqualifying offense.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to Section 86c, the appropriate sanction is revocation of the credential, in the absence of demonstration of rehabilitation, pursuant to Section 91d of the Act, or waiver, pursuant to Section 91e of

the Act. See, State v. Wynette Harris, Dkt. No. 81-18, Commission Decision, June 29, 1983. Pursuant to Section 91d of the Act, the respondent's casino hotel employee registration should not be revoked on the basis of her conviction of an offense enumerated in the Act as disqualification criteria, provided that she has affirmatively demonstrated her rehabilitation by clear and convincing evidence. Similarly, the petitioner shall not be denied a casino employee license on the basis of the otherwise disqualifying conviction, provided that she affirmatively demonstrated her rehabilitation, pursuant to Section 90h of the Act.

In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-91d (the language of Section 90h is almost identical) shall be considered:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

The petitioner is now 30 years old. Her unlawful conduct began in 1982 when she illegally entered the United States and intentionally utilized a false social security number for purposes of obtaining employment and a casino hotel employee registration. She continued to use the false social security number for approximately four years.

The petitioner has satisfied the terms of her probationary sentence, including payment of a substantial fine. Both before and after her involvement with the United States Criminal Justice System, the petitioner was able to maintain her employment. In

fact, she is considered to be an outstanding employee in the legalized gaming industry in Atlantic City.

The petitioner has married and is contributing to the support of her two children. She satisfactorily completed a course in blackjack dealing and she wishes to obtain a casino employee license to further her career. Other than the aforementioned conviction, the petitioner has no record of criminal arrests and convictions. Finally, she is now a lawful resident of the United States and she obtained a valid social security number.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has been convicted of a disqualifying offense under Section 86c(1) of the Casino Control Act, has established her rehabilitation by clear and convincing evidence, within the meaning of Sections 90h and 91d of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained her burden of establishing by clear and convincing evidence that she presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act.

Notwithstanding these conclusions, the Casino Control Commission shall also deny a casino employee license application and may revoke a casino hotel employee registration on the basis of the applicant or registrant having supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, pursuant to Section 86b of the Casino Control Act. An applicant or registrant so disqualified on the basis of having provided false or misleading information is not entitled to overcome the disqualification by demonstrating her rehabilitation, within the meaning of Sections 90h and 91d. In this matter, it is undisputed that the petitioner intentionally provided a false social security number on her Personal History Disclosure Form in 1982 in order to obtain a casino hotel employee registration. This false information was provided to the Golden Nugget Casino Hotel in order to obtain employment. Consequently, I must **CONCLUDE** that the petitioner be disqualified from licensure as a casino employee and subject to revocation of her casino hotel employee registration as a result of her having supplied material information which is untrue or misleading, within the meaning of Section 86b of the Casino Control Act.

Section 91e of the Act permitted the waiver of any disqualification criterion for a casino hotel employee consistent with the public policy of the Casino Control Act and upon a finding that the interest of justice is so required. At Section 1b(6) of the Act, the legislature declared the public policy to be in part that "an integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." Based upon the discussion of rehabilitation factors above, it is apparent that the public's confidence in the integrity of the legalized gaming industry would not justifiably be undermined by the continued registration of the petitioner. Based upon the undisputed facts in this matter, I **CONCLUDE** that the interest of justice require the waiver of the criterion which would otherwise disqualify the petitioner from continuing to hold her casino hotel employee registration.

There is no comparable waiver of disqualification criterion available to the petitioner in regard to her application for a casino employee license. Although she has overcome her disqualification as a result of her conviction of an enumerated offense, by establishing her rehabilitation, the petitioner is unable to overcome her disqualification for licensure as a casino employee which results from her having intentionally supplied material information which was false or misleading. Thus, I **CONCLUDE** that the petitioner's application for a casino employee license must be **DENIED.** However, although the question is not before me, it is my recommendation to the Casino Control Commission that the five year bar against reapplication which ordinarily follows a disqualification under the criteria of Section 86 of the Act, pursuant to N.J.A.C. 19:41-8.8(a), be relaxed, pursuant to N.J.A.C. 19:41-8.8(g) and N.J.A.C. 19:40-1.3(d). In this way, the petitioner could be permitted an early or immediate reapplication for a casino employee license, following her disqualification.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the amended complaint filed by the Division of Gaming Enforcement against Blanca L. DeCastro be **DISMISSED,** and that the petitioner be permitted to retain her casino hotel employee registration. It is further **ORDERED** that the application of Blanca L. DeCastro for a casino employee license permitting her to work in a licensed casino as a blackjack dealer be **DENIED.**

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

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

12/31/87
DATE

Joseph F. Fidler, ALJ (SR)
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

1-4-88
DATE

Anne L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 6 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ml

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 Letter dated August 5, 1985, with attachments
P-2 Copy of Record of Marriage
P-3 Letter dated November 13, 1987
P-4 Letter dated November 14, 1987

For the Respondent:

R-1 Criminal Complaint with attachment filed April 9, 1985
R-2 Warrant for Arrest, dated April 9, 1985
R-3 Indictment filed May 9, 1985
R-4 Plea Agreement dated July 11, 1985
R-5 Judgment and Probation Order filed September 6, 1985
R-6 Personal History Disclosure Form No. 4
R-7 Application for Employment
R-8 Employees' Withholding Allowance Certificate
R-9 Personal History Disclosure Form No. 2A

WITNESSES

For the Petitioner:

Blanca L. DeCastro
Anibal DeCastro

For the Respondent:

Blanca L. DeCastro

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-220
APPLICATION NO. 71376-22
OAL DOCKET NO. CCC 3035-88
ORDER NO. 88-48-4

APPLICATION OF CHARLIE DEJESUS

FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of December 7, 1988,

IT IS on this 13th day of January 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

SB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3035-88
AGENCY DKT. NO. 88-EA-220

CHARLIE DEJESUS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Charlie DeJesus, the petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 20, 1988 Decided: October 31, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Charlie DeJesus, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (public area attendant-carpenter), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

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PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a public area attendant-carpenter at Trump's Castle Hotel and Casino. By letter to the Commission, dated March 11, 1988, the Division objected to the petitioner's application for licensure as a public area attendant, asserting that the petitioner had been convicted in Pennsylvania of aggravated assault which is analogous to N.J.S.A. 2C:12-1b(2), which is a disqualifying offense under section 86c(1). The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on April 11, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated April 18, 1988, which was received by the Commission on April 21, 1988, the petitioner requested a hearing. On April 22, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on April 27, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before me on June 20, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:12-1b(2), aggravated assault (third degree).

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on October 20, 1988, at the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record closed.

THE FACTS

In 1980, at the age of 14, the petitioner, Charlie DeJesus, began dating Sylvia Rivera. The two had a child. In November of 1983, Jose Santiago began dating Sylvia Rivera and at that time, Mr. Santiago had a fight with the petitioner. The two had another fight in March of 1984 (R-2).

At approximately 8:30 p.m. on July 12, 1984, Mr. Santiago began drinking with a group of about ten Hispanic males in front of a house in Lancaster, Pennsylvania. The group was drinking wine, Southern Comfort, and beer (R-1). Mr. Santiago admitted drinking a quart of Stroh's beer (R-2). At approximately 10:30 p.m., the petitioner drove up intending to go see his son. Mr. Santiago approached the petitioner who remained in his car. The two began to argue and Mr. Santiago threatened the petitioner with a gun. Mr. Santiago threatened to kill the petitioner because of their previous altercations. The petitioner would not get out of the car and he drove away (R-1).

Sometime later the petitioner returned with his cousin. They exited the vehicle and found Mr. Santiago. The petitioner's cousin hit Mr. Santiago on the head with a baseball bat, and the petitioner hit Mr. Santiago on the arms with a 14-inch machete. Mr. Santiago sustained two small lacerations on his left forearm and one small laceration on the right forearm (R-2). The petitioner and his cousin then fled the area (R-1).

Later, the petitioner telephoned the hospital to inquire about Mr. Santiago's condition, and he then turned himself in to the police. Mr. DeJesus was charged with aggravated assault. On November 20, 1984, the petitioner pleaded guilty to the charge in District Court, and he was sentenced to a term of not less than 11 and one-half months nor more than 23 months in the Lancaster County Prison, Pennsylvania (R-3).

The petitioner was born on May 7, 1966, and is currently 22 years old. While in prison he completed his G.E.D. He also earned the privilege of leaving the prison and enrolling in a vocational training program. He completed a 24-week, full-time training course in construction and maintenance skills (P-7). After completing this program, he was allowed to enter a work-release program (P-7). After being released from prison, the petitioner continued to work at Consolidated Construction Company, where he had been employed in the work-release program.

On April 19, 1986, the petitioner married. He and his wife now have three children together with two children from his wife's previous marriage. In August of 1986, the petitioner quit his job and moved his family to New Jersey in order to look for a better job and to get a fresh start. In October 1986, he became employed at the Claridge Casino Hotel as a public area attendant-heavy porter. He applied for and received a casino hotel employee registration from the Commission, no. 70632-40. In May 1987, the petitioner resigned his position and became employed at Trump's Castle Hotel and Casino as a carpenter. He changed jobs so he could be employed in his trade.

The petitioner has been a loyal, hardworking employee at Trump's Castle. His hard work and dedication were recognized by his selection as employee of the month for May 1988. He was the first union carpenter to ever be selected as employee of the month at Trump's Castle.

The petitioner submitted eight letters of recommendation and other documentary evidence. Patrick DeRogatis, director of facilities at Trump's Castle Hotel and Casino, in a letter dated June 17, 1988, wrote:

> Charles is a dependable, hard working employee. He has a good rapport with fellow employees. He was selected as employee of the month, for May 1988. As he has been working for this department since May of 1987, I know of no reason, at this time, why his status should change. [P-1]

James J. Mahoney, business representative of Carpenters Local 623, United Brotherhood of Carpenters and Joiners of America, in a letter dated April 14, 1988, wrote:

> Charles DeJesus, has been a member in good standing with the United Brotherhood of Carpenters, Local 623, and had demonstrated, time and again, the kind of positive attitude we look for in a member. He is a consciencious [sic], dependable person who takes pride in all that he does. I would not hesitate to send Charlie on any job, knowing he will give 110% of his time. [P-2]

John K. Kleimo, director of education and safety, Merit Shop Training and Research Center, Inc., summarized the petitioner's educational curriculum and his employment record, then wrote:

> Your performance and attendance while a trainee were exemplary, as were the reports from your instructor and supervisors during

> internship and afterward. Based on our records and my personal knowledge of you, I can recommend you as an employee to any employer. [P-7]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident or his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He was extremely forthright and honest. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct was, in part, due to immaturity. The petitioner was 18 years old at the time of the offense. He thought and acted like an adolescent. He has since grown up and now considers himself to be a man. He learned a great deal in prison and he has learned from his mistakes. He is remorseful and accepts full responsibility for his conduct. He now has a family and is a responsible, working member of his community.

FINDINGS OF FACT

1. The petitioner assaulted Jose Santiago with a machete on July 12, 1984, in Lancaster, Pennsylvania.

2. The petitioner was convicted of aggravated assault in the District Court of Lancaster County Pennsylvania on November 20, 1984, and he was sentenced to serve a term of not less than 11 and one-half months nor more than 23 months in the Lancaster County Prison.

3. While in prison, the petitioner earned his G.E.D., earned the privilege of enrolling in a vocational training program which he successfully

completed, and he earned the privilege of being placed in a work-release program. The petitioner was released from prison at his first eligibility.

4. The petitioner was born on May 7, 1966, and is currently 22 years old.

5. The petitioner is married and has three children and two stepchildren.

6. The petitioner resides in Brigantine, New Jersey.

7. The petitioner is a dedicated, hardworking employee at Trump's Castle Hotel and Casino, where he was the employee of the month for May 1988.

8. The petitioner is active in the Cub Scouts and is becoming active in local children's football and baseball leagues.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978 c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> ....

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N.J.S. 2C:12-1b (aggravated assault which constitutes a crime of the second or third degree);

. . . .

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

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities

were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

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

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION

The Division contends that the petitioner was convicted in Pennsylvania of aggravated assault which is analogous to a violation of N.J.S.A. 2C:12-1b(2), Aggravated Assault - third degree, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's conviction for aggravated assault in Pennsylvania for hitting Jose Santiago with a machete, which would be a violation of N.J.S.A. 2C:12-1b(2) if the offense had been committed in New Jersey, disqualifies the petitioner from licensure.

N.J.S.A. 2C:12-1b, aggravated assault, provides in pertinent part:

b. Aggravated assault. A person is guilty of aggravated assault if he:

....

(2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

....

Aggravated assault . . . under subsection b(2) is a crime of the third degree; . . .

The Division established, and the petitioner admitted during his testimony, that he purposely and knowingly struck Jose Santiago with a machete and that he was convicted in Pennsylvania of aggravated assault for this offense. Accordingly, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:12-1b(2). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:12-1, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under section 86c(1). The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1).

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

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. DeJesus is a non-gaming casino employee and is employed as a carpenter. As such, he does not have direct responsibilities for actual gaming activities or contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:12-1b(2), Aggravated Assault - third degree. Because the offense is a crime of violence and is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner was on his way to visit his son. When he arrived, he was approached by his son's mother's then paramour, Jose Santiago, who had been drinking. Mr. Santiago threatened the petitioner with a gun. The petitioner safely departed the area but, because of his immaturity, the petitioner returned with his cousin and assaulted Mr. Santiago by hitting him with a machete, inflicting three small cuts. Because it is a crime of violence which resulted in an injury, it is extremely serious.

Fourth, the petitioner's misconduct occurred on July 12, 1984, when it ceased.

Fifth, the petitioner was 18 years old at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes he has learned and matured since then and such conduct will not occur again. He is now a responsible, productive member of society.

Sixth, the petitioner has not committed any other violation of the criminal laws either prior to or since this incident.

Seventh, the petitioner was attempting to visit his son, and he was threatened by his former paramour's new lover with whom he had had previous altercations. Due to his immaturity, he decided to return and face his rival rather than simply depart the area.

Eighth, the petitioner has made substantial rehabilitative efforts. He was a model inmate in prison; he earned his G.E.D.; he earned the privilege of enrolling in a vocational trainng program which he successfully completed; and he earned the privilege

of participating in a work-release program. His performance as a trainee was exemplary. He has been gainfully employed ever since leaving prison. He has married and supports five children. The petitioner has been employed in the casino industry continuously since October 2, 1986. His job performance has been exemplary. He was the employee of the month at Trump's Castle in May 1988, the first union carpenter ever selected. He is active in the Cub Scouts and is becoming active in youth football and baseball leagues. He has demonstrated that he has matured and has accepted responsibility. He has openly and readily disclosed his misconduct to all of his employers, to the Commission, to the Division, and to myself. The petitioner has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish his rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. DeJesus was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, at 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, has regained control over his behavior, has served his sentence, has learned a trade, has performed admirably within the casino industry during the past two years, has married, supports five children, and has become a respected member of his community.

This is one of the most impressive petitioners who has ever appeared before me. Having previously been active in the criminal justice system and corrections system for a number of years, and having personally reviewed hundreds of applications for parole, pardons, and executive clemency, I can state that this petitioner has one of the best attitudes and best records I have seen. He epitomizes the goals of rehabilitation. He learned from his mistake and completely turned his life around. He is rehabilitated and is a productive member of society. A bright future is before him. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. DeJesus is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

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

DISPOSITION

It is **ORDERED** that the application of Charlie DeJesus for issuance of a casino employee license be **GRANTED.**

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

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

October 31, 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11-2-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 3 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of Patrick DeRogatis, director of facilities, Trump's Castle Hotel and Casino, dated June 17, 1988

P-2 Letter of James J. Mahoney, business representative of Carpenters Local 623, United Brotherhood of Carpenters and Joiners of America, dated April 14, 1988

P-3 Letter of Ivana Trump, chief executive officer, Trump's Castle Hotel and Casino, dated April 19, 1988, congratulating petitioner for being named employee of the month

P-4 Certificate of Training issued by Merit Shop Training and Research Center, Inc., dated September 30, 1985

P-5 Profile of petitioner distributed by Associated Builders and Contractors, Inc.

P-6 Profile of petitioner distributed by Lancaster Employment and Training Agency

P-7 Letter of John K. Kleimo, director of education and safety, Merit Shop Training and Research Center, Inc., dated June 18, 1987

P-8 Letter of Gerald F. Bigelow, general superintendent, Consolidated Construction Company, dated June 19, 1987

For the Respondent:

R-1 Lancaster Police Department Supplementary Report, dated July 13, 1984, re: statements of Arcadio Rosario, Jr., and Andrew Santos

R-2 Lancaster Police Department Supplementary Report, dated July 13, 1984, re: statement of Jose Santiago

R-3 Lancaster Police Department Case History, re: petitioner

R-4 Petitioner's Personal History Disclosure Form-2A, dated September 25, 1986

WITNESSES

FOR THE PETITIONER:

Charlie DeJesus

FOR THE RESPONDENT:

Charlie DeJesus

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO 89-M-3
APPLICATION NO. 54526-21
OAL DOCKET NO. CCC 6908-88
ORDER NO. 89-5-11

APPLICATION OF BIMAL R. DUA

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 1, 1989,

IT IS on this 6th day of March 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6908-88
AGENCY DKT. NO. 89-M-3

BIMAL R. DUA,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Mark H. Sandson, Esq., for petitioner (Hankin, Sandson & Sandman, attorneys)

Barth F. Aaron, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 10, 1988 Decided: December 20, 1988

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

STATEMENT OF THE CASE

Bimal R. Dua (petitioner) seeks licensure as a casino key employee under the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The position in question is vice president of marketing/northeast for the Tropicana Casino Hotel. The holder of such a position is required to be licensed in accordance with the standards for a casino key employee pursuant to section 89 of the Casino Control Act and is also considered to be a qualifier of the casino licensee pursuant to section 85c.

In a letter report to the Casino Control Commission dated September 8, 1988, the Division of Gaming Enforcement neither recommended nor objected to the petitioner's licensure. Rather, the Division raised questions concerning the petitioner's suitability for licensure based upon his alleged failure to disclose material information concerning a civil judgment. The issues to be resolved in this matter are as follows:

1. Has the petitioner demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino key employee pursuant to section 89(b)(2) of the Casino Control Act, in light of his alleged failure to disclose in his applications a civil judgment entered against him.

2. Is the petitioner disqualified from licensure pursuant to section 86b of the act in light of his failure to disclose a civil judgment.

PROCEDURAL HISTORY

On September 22, 1988, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on October 13, 1988. The hearing was held as scheduled on October 25, 1988, in Pleasantville, New Jersey. At the request of the parties, the record remained open following the hearing to permit the submission of letter memoranda. The final document from the parties was received on November 10, 1988 (Exhibit P-6), and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 36-year-old resident of New Jersey. He is married and he has two children. The petitioner was born in Faridabad Haryana, India, and he came to the United States in 1975. He was educated in India.

In 1985, the petitioner was issued a sole owner/operator junket enterprise license by the Casino Control Commission. Prior to receiving that license, the petitioner was subject to the customary investigation by the Division of Gaming Enforcement. On his Personal History Disclosure Form 2A, the petitioner had responded in the negative to questions concerning judgments against him or pending litigation. However, the Division investigation revealed that a default

judgment had been entered against the petitioner in 1983. This was a judgment in favor of Playboy/Elsinore Associates in the amount of $5,298.66.

The petitioner was interviewed by a Division agent in December 1984 and he was questioned about Playboy's claim. The petitioner testified at the hearing that Playboy's claim concerned a fashion show which had been held at the casino. According to the petitioner, he had helped a church group make arrangements with the casino for the fashion show, but that was the extent of his involvement. He made no oral or written agreements with the casino for any of the expenses involved. Thus, he was very surprised some eight or nine months after the event when he received billings from the casino for the cost of bus fare and lunch for the patrons of the fashion show.

The petitioner testified credibly at the hearing that he made a few telephone calls to the collection department at Playboy in an attempt to resolve the matter. He had no contact with any attorney for the casino and he was never served with any complaint or other court papers concerning the casino's claim. The petitioner explained this information to the Division's agent in December 1984.

The petitioner testified that he participated in a sworn interview with Deputy Attorney General Stephen Cirillo in July 1985 (Exhibit R-2). At that time, the petitioner was informed that Playboy had obtained a default judgment against him. The petitioner testified at the hearing that he explained the situation to Deputy Attorney General Cirillo as he had earlier explained it to the Division agent. The petitioner stated that he subsequently contacted Playboy's collection department. He was told that they had no record of the matter. When he contacted the attorney who was named by the Playboy Collection Department, he learned that the attorney had died.

On December 23, 1987, the petitioner filed a Personal History Disclosure Form No. 1 (Exhibit R-3) with the Casino Control Commission. In response to question no. 77 which asks the applicant if he has ever been a party in a civil suit, the petitioner answered "no." The petitioner was interviewed concerning his key employee license application in May 1988 by Division Agent Robert Spisak. The agent's summary reports were admitted into evidence as Exhibits R-5, 6 and 7.

According to the petitioner, Agent Spisak went through the Personal History Disclosure Form with him, page by page. When the agent asked the petitioner if he

had ever been a party to a lawsuit, the petitioner replied that he had not. The petitioner testified that he was then shown the transcript of his interview with Deputy Attorney General Cirillo (Exhibit R-2). According to the petitioner, he had not understood what a civil suit and a judgment were. Agent Spisak explained to him how a default judgment could be obtained. The petitioner testified believably that he had totally forgotten about Playboy's claim and he did not feel that he owed anything to Playboy anyway.

The petitioner testified sincerely that he understands the importance of being truthful to the Division and to the Casino Control Commission. He stated that he had no intention to lie. He now understands what a suit and a judgment are. He noted that he had disclosed on the Personal History Disclosure Form at question no. 86 (Exhibit R-3) that he had gone through a bankruptcy in February 1981. Although this was embarrassing to him, he was aware of it and knew that it had to be disclosed.

In May 1988, the petitioner satisfied the judgment against him and he obtained a release from Elsinore Shore Associates, trading as Atlantis Casino Hotel (Exhibit P-1). Steven Bolson, Esq., Vice President of Legal Affairs for Trop World Casino and Entertainment Resort, testified that the petitioner had come to him for assistance. He felt he did not owe any money and he did not understand how there could be a judgment against him. The petitioner also explained how he had never been served with any court papers and had never participated in a lawsuit. Mr. Bolson assisted the petitioner in settling the debt with Elsinore and a warrant of satisfaction was recorded.

Mr. Bolson testified that he has known the petitioner for about two years. The petitioner has been serving as Director of Marketing for the New York area. It is Mr. Bolson's opinion that the petitioner possesses the highest degree of honesty and integrity and financial responsibility. He feels that the petitioner should be licensed at the highest level. Mr. Bolson's testimony was sincere and credible in every respect. Richard W. Brewer, Vice President of Casino Games for Trop World, testified that he has known the petitioner for about eight years. He has worked closely with the petitioner and they have become good friends. In Mr. Brewer's opinion, the petitioner possesses very strong moral standards and conducts business on the highest level. Mr. Brewer feels that the petitioner's integrity is unquestioned.

The petitioner also offered into evidence several letters from individuals who attested to his good character (Exhibit P-2 through P-6). These individuals have known the petitioner both professionally and socially. Each writer expressed his view that the petitioner is a man of the highest moral character with impeccable honesty and integrity.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino key employee license demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to section 89b(2) of the act.

Section 89d of the act provides that a casino key employee license shall be denied to any applicant who is disqualified on the basis of the criteria contained in section 86 of the act. Section 86b provides that the Commission shall deny licensure to an applicant disqualified for failure to provide information required by the act or requested by the Commission, or for failure of the applicant to reveal any fact material to qualification, or for the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria. An intentional nondisclosure, premised upon the belief of the applicant that licensure would be adversely affected by disclosure, is grounds for mandatory disqualification. However, it is well settled that an inadvertent or ignorant failure to make a disclosure will not warrant disqualification.

It is undisputed in this matter that the information concerning civil suits and judgments involving the petitioner was material to his qualifications for licensure. It is further undisputed that the petitioner did not disclose in his Personal History Disclosure Form (Exhibit R-3) a default judgment entered against him in 1983. However, the undisputed facts in this matter establish that the petitioner did not understand the nature of the default judgment and its relationship to a civil suit. The petitioner had no intention of deceiving the Commission or the Division, and his failure to disclose the default judgment was not committed intentionally or in

disregard of the regulatory process. I so **CONCLUDE**. Thus I further **CONCLUDE** that the petitioner is not disqualified from licensure pursuant to section 86b of the act, in light of his failure to disclose the default judgment.

Although he questions the underlying basis for the default judgment entered against him, the petitioner has satisfied that judgment and has received a release (Exhibit P-1). Substantial evidence was presented during the hearing concerning the petitioner's high moral character and honesty. On the basis of the undisputed facts in this matter, I **CONCLUDE** the petitioner has sustained his burden of establishing by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino key employee, within the meaning of section 89b(2) of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for licensure as a casino key employee/qualifier should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Bimal R. Dua for licensure as a casino key employee be **GRANTED**.

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

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

December 20, 1988
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

12-21-88
DATE

Dolores Post
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 22 1988
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:-

P-1 General Release and copy of check

P-2 Letter dated October 12, 1988

P-3 Letter dated October 10, 1988

P-4 Letter dated October 11, 1988

P-5 Letter dated October 12, 1988

P-6 Letter dated October 11, 1988

For the respondent:

R-1 Transcript of sworn interview dated September 2, 1988

R-2 Transcript of sworn interview dated July 8, 1985

R-3 Personal History Disclosure Form No. 1, dated December 23, 1987

R-4 Investigative Summary Report dated May 1, 1985

R-5 Investigative Summary Report dated June 7, 1988

R-6 Supplementary Summary Report dated June 17, 1988

R-7 Supplementary Summary Report dated August 3, 1988

WITNESSES

For the petitioner:-

Bimal R. Dua
Steven Bolson
Richard W. Brewer

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-92
APPLICATION NO. 70012-21
OAL DOCKET NO. CCC 432-88
ORDER NO. 89-2-6

APPLICATION OF JACKIE EDWARDS — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989,

IT IS on this 2nd day of March 1989, ORDERED that the initial decision is modified as follows:

> (1) To reject the ALJ's conclusion that the 1972 offense of possession of CDS with intent to distribute was not a disqualifying offense in that the offense occurred more than ten years prior to the application for licensure. (Init. dec. at page 6). The mere fact that the offense happened over ten years ago is not the sole factor in determining whether the offense is, in fact, disqualifying. The Act places the burden upon the applicant to demonstrate by clear and convincing evidence that the ten or more year old offense in question should not result in his disqualification. In State v. Ronald Jones, Docket No.86-15 (Commission order July 8, 1987), the Commission held that the correct analysis in determining this issue is not unlike the analysis of the rehabilitation factors contained in sections 90h and 91d of the Act.

Because there is a more significant and recent statutory disqualifying offense (theft by deception), a determination of whether the 1972 offense of possession of CDS with intent to distribute need not be made.

(2) To reject that portion of the initial decision at page 6, wherein the ALJ concluded "by inference" that the "petitioner was convicted of an offense which is comparable to theft by deception pursuant to N.J.S.A. 2C:20-4." N.J.S.A. 5:12-86g provides a statutory basis for disqualification even without a conviction, making it neither necessary nor prudent to draw such an inference. The evidence in this record which includes the applicant's admission of theft by deception warrants a conclusion that the applicant is disqualified under N.J.S.A. 5:12-86c(1) and 86g.

(3) To eliminate the ALJ's erroneous reference to "section 86c(2) g." (Init. dec. page 7). The correct statutory reference for this statutory reference for this disqualification should be N.J.S.A. 5:12-86c(1) and 86g.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 89-2-6

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 432-88
AGENCY DKT. NO. 88-EA-92

JACKIE EDWARDS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Jackie Edwards, petitioner, pro se
Ralph Fusco, Deputy Attorney General, for respondent, (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: July 21, 1988 Decided: November 10, 1988

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission on or about December 10, 1987, objecting to the issuance of a casino employee license to Jackie Edwards grounded upon its allegation that petitioner was convicted of a crime listed as a statutory disqualifier under N.J.S.A. 5:12-86c(1) and that petitioner lacks the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-89b(2).

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PROCEDURAL ASPECTS

Subsequent to its receipt of the Division's objection letter the Commission gave petitioner notice of same. On January 12, 1988, petitioner requested a hearing. Thereafter, on January 22, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On April 11, 1988, a prehearing conference was conducted by Administrative Law Judge (ALJ) Stephen W. Thompson at which, among other things, the issues to be determined were agreed upon and a hearing date established. The matter was assigned to ALJ Joseph Fidler and thereafter to the undersigned who held the hearing on June 30, 1987 at the Galloway, New Jersey Township Municipal Court. Petitioner requested and was granted leave to submit posthearing documents which were received by the OAL on July 21, 1988 which constituted the record closing date of the herein matter. Extensions were requested and granted for the execution of the herein initial decision.

ISSUES

The specific issues to be determined by this administrative tribunal, as agreed upon by the parties at the April 11, 1988 prehearing, are these:

A. **Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2A:111-2 which is analogous to N.J.S.A. 2C:20-4, theft by deception.**

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

C. **Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.**

UNCONTESTED FACTS

Based upon the testimony and documents offered and marked into evidence, the following facts are neither contested nor in dispute. Therefore, the following are hereby adopted, by reference, as my **FINDINGS OF FACT**:

Petitioner is presently the holder of casino hotel employee registration number 76936-40. The Division does not seek revocation of petitioner's registration but, rather, it only objects to the issuance of a casino employee license to him. Petitioner has been employed by the Trump Plaza Hotel/Casino as a cook under his registration since about July 11, 1987.

Petitioner, who was born on July 26, 1952, attended high school in South Carolina and Philadelphia, Pennsylvania. In or about 1969-70, petitioner moved to Jersey City, New Jersey. On October 23, 1971, he was arrested by the Jersey City police for the possession of illegal drugs (heroine). Subsequently, on March 10, 1972, petitioner was again arrested by the Jersey City police for which he was charged with the possession of illegal drugs (heroine) with intent to distribute and the possession of a dangerous weapon. On January 29, 1973, the Superior Court of New Jersey, Hudson County, accepted petitioners plea of guilty to Accusation No. 123-72 and the crime of possession of controlled dangerous substance (CDS) with the intent to dispense in violation of N.J.S.A. 24:21-19(1). The 1971 charges were dismissed together with the 1972 charge of possession of a dangerous weapon. The Court sentenced petitioner to the New Jersey youth Correctional Institution at Yardville, New Jersey on the guilty plea together with his sentence to run concurrently with a sentence petitioner was to serve at Manning Correctional Institution, Columbia, South Carolina (R-2, R-3, R-4).

The record reveals that petitioner was approximately 19 years of age when he committed the 1971 offense; approximately 20 years old when he committed the 1972 offense; and, approximately 21 years of age when sentenced to Yardville Correctional Institution.

In or about 1973, petitioner commenced employment with the Nelson Distribution Corp. in its shipping and receiving department. At divers times while employed by Nelson, petitioner was subject to lay-offs for which he was eligible and collected Unemployment Insurance Benefits (UIB). In 1979, petitioner was terminated by Nelson. Petitioner, through his union, filed to have his termination arbitrated. During the period of his termination and the arbitration, petitioner filed for UIB. Petitioner testified that he lost five weeks of wages while awaiting the arbitration award, which placed him back on six months probation with Nelson.

The record demonstrates that petitioner collected 17 weeks of UIB from February 3, 1979 to May 5, 1979 (R-5).

On March 14, 1980, the Division of Unemployment and Disability Insurance sent petitioner its Determination and Demand for Refund of UIB and Imposing of Penalty and Disqualification alleging that petitioner had been in receipt of UIB overpayments in the total amount of $2,420 together with fines which totaled $2,860. By way of this notice, petitioner was disqualified for benefits from May 14, 1980 to September 9, 1980 (P-5).

On or about June 10, 1980, the Division of Unemployment and Disability Insurance of the Department of Labor and Industry of New Jersey filed a Certificate of Debt with the Clerk of the Superior Court of New Jersey (R-7). Subsequently, the Hudson County Grand Jury handed up Indictment No. 1150 alleging that petitioner:

> .... knowingly or designedly, by means of concealing or failing to disclose a material fact which it was his duty to reveal, did obtain from the New Jersey Division of Employment Security, under the pretense that he was out of employment, benefit checks to the total amount of $2,420.00, contrary to the provisions of N.J.S.A 2A:111-2 (R-7).

In or about 1981, petitioner moved to Williamstown, Gloucester County, New Jersey. In 1985, while riding in a motor vehicle with friends in Bordentown, New Jersey, the local police caused the motor vehicle to be stopped. Thereafter, the occupants of the motor vehicle, including petitioner, were escorted to the Bordentown Police Department where they were charged with possession of CDS (marijuana). While being processed, the Bordentown Police ran a check on petitioner and discovered that there was an outstanding bench warrant for petitioner's arrest. As a consequence, petitioner was incarcerated overnight at Bordentown and escorted to Hudson County the following day.

The Superior Court Judge in Hudson County required that petitioner make restitution to the UIB which he received and for which he was not entitled during the period February-May 1979. He was also required to pay all penalties and fines through the Gloucester County Probation Department. Petitioner was admonished by the Court that he would be subject to arrest in the event he failed to make

restitution within the time limits set by the Court. With regard to the Bordentown arrest and CDS charges, petitioner was found guilty, fined $550 and sentenced to the Burlington County Jail for 30 days.

Subsequently, on November 21, 1986, petitioner was arrested at his home in Williamstown for his failure to make restitution to the Unemployment and Disability Insurance program as stipulated by the Superior Court Judge in Hudson County. Petitioner testified that thereafter, he made full restitution to the outstanding debt due and owing to the UIB. The Division stipulates that petitioner has satisfied the claim against him by the Division of Unemployment and Disability Insurance as of January 29, 1987.

Petitioner is presently 36 years of age; married with three children, 20 months, three years and four years of age. Petitioner has not used heroine for the past ten years nor has he used marijuana since his last arrest in 1986. Petitioner has never attended a drug treatment program nor has he ever engaged in drug counseling. He has been employed in the casino industry for approximately one year at the Trump Plaza. While he has performed in his job in an exemplary manner, neither of the two individuals who wrote recommendations for petitioner indicated that they were aware of his past criminal conduct nor that they had knowledge of his drug involvement.

Petitioner is applying for licensure as a slot attendant or slot mechanic.

This concludes the recital of my **FINDINGS OF FACT**.

DISCUSSION AND CONCLUSIONS

The Division contends that petitioner committed two disqualifying offenses, albeit, not automatic pursuant to N.J.S.A. 5:12-86c(1). The offense of theft by deception, N.J.S.A. 2C:20-4 (N.J.S.A. 2A:111-2, repealed by L. 1978, c. 95) and possession of CDS with intent to distribute, N.J.S.A. 24:21-20(1) which is comparable to N.J.S.A. 2C:35-5, are of sufficient magnitude to disqualify petitioner from licensure notwithstanding that the offenses were committed more than ten years prior to these proceedings and petitioners application N.J.S.A. 5:12-86c(2).

With regard to the arrest and conviction for possession of CDS with intent to distribute (N.J.S.A. 24:21-20(1)), the record demonstrates that petitioner was arrested on March 10, 1972 and convicted of the offense on January 29, 1973. The Casino Control Act (Act) provides, in pertinent part, at N.J.S.A. 5:12-86c(2) that:

> ...the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification....(emphasis supplied)

Applying the clear language of this subsection to the instant matter, I **CONCLUDE** that petitioner has not committed an automatic disqualifying offense by virtue of the age of the N.J.S.A. 24:21-20(1) offense and conviction which occurred more than ten years prior to petitioner's application for licensure. This conduct may, however, be referenced with regards to the issue of petitioners good character, honesty and integrity and his rehabilitation.

With respect to the UIB alleged theft by deception, the record demonstrates that the offense occurred in 1979; nine years prior to petitioner's application for licensure. Thus, the offense was committed within the ten year limitation as set forth in N.J.S.A. 5:12-86c(2). In addition, petitioner's appearance before the Superior Court occurred on or about March 1985 on an outstanding bench warrant for his arrest for failure to satisfy the UIB claim. The Division did not present proof of a conviction for the offense, however, petitioner admits that the Court ordered petitioner to make restitution of the UIB he collected and to which he was not entitled. Petitioner further admits that when he failed to comply with the Court's order to satisfy the UIB overpayment, he was again arrested; an unlikely occurrence unless petitioner was on probation and failed to comply with the terms of his court ordered probation. I **CONCLUDE**, therefore, by inference, that petitioner was convicted of an offense which is comparable to theft by deception pursuant to N.J.S.A. 2C:20-4.

N.J.S.A. 2C:20-4 provides, in pertinent part, as follows:

> A person is guilty of theft is he purposely obtains property of another by deception. A person deceives

> if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

Petitioner admits that he collected and received UIB overpayments in the amount of $2,420. Pursuant to the grading of theft offenses under N.J.S.A. 2C:20-2b(2):

> Theft constitutes a crime of the third degree if:
> (a) The amount involved exceeds $500.00 but is less than $75,000.00.

Thus, the amount of petitioner's overpayment of UIB to which he was not entitled and which constitutes an offense comparable to theft by deception, is also comparable to a crime of the third degree; an automatic disqualifying offense for casino employee licensure. *State v. Moore,* 158 N.J. Super. 68 (App. Div. 1978).

Accordingly, I **FIND** and **CONCLUDE** that the offense of theft by deception in the third degree, to which petitioner admits, is a per se disqualifying offense under section 86c(1), of the Act and/or as incorporated in section 86c(2)g. Therefore, petitioner is ineligible to hold a casino employee license.

Respondent is required to establish his good character, honesty and integrity, by clear and convincing evidence, pursuant to Section 90h of the Act which incorporates Section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are true key factors. *In the Matter of the Application of Resorts International Hotel for a Casino License*, Casino Control Commission (February 26, 1979). Therefore, when the Division places the individual applicant's good character, honesty and integrity in issue and objects to licensure under Section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. *In*

re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Here, petitioner produced no witnesses or sufficient documentation to demonstrate that he possessed the characteristics and attributes for a casino employee license. Rather, he testified on his own behalf and produced two letters from fellow employees complementing petitioner on his work and attendance at Trump Plaza (P-1, P-2). There is no indication that either of the two individuals who wrote the letters on petitioner's behalf had any knowledge of petitioner's extensive criminal background; including his possession and use of illegal drugs or that he had committed an act of theft by deception. Neither writer stated or opined that petitioner possessed good character, honesty or integrity.

I **FIND** and **CONCLUDE** that petitioner has failed to meet his burden of proof and affirmatively establish, by clear and convincing evidence, that he possesses the requisite characteristics and attributes prescribed by Section 89b(2).

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-90h and 91d. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

In consideration of petitioner's claim of rehabilitation, the following is found in the herein record:

1. Petitioner presently holds a casino hotel registration number 76936-40, which is not at issue in these proceedings. Petitioner has applied for a casino employee license as a casino teller or, those activities in the industry having to do with computers.

2. The offense upon which the Division has placed its emphasis and reliance in this matter involves petitioner's collection of $2,420 in UIB to which he was not entitled from February 3 to May 5, 1979. Petitioner was indicted by the Hudson County Grand Jury on the charge of obtaining UIB under false pretense contrary to N.J.S.A. 2A:111-2, repealed by L. 1978, c. 95, N.J.S.A. 2C:98-2; now N.J.S.A. 2C:20-4 theft by deception. The amount of $2,420 for which petitioner was indicted and admits he collected when ineligible to do so, is defined as a crime of the third degree pursuant to N.J.S.A. 2C:20-2b(2)(a). The offense, therefore, was a serious one.

3. The offense was committed as a consequence of petitioners having been terminated from his employment position and which petitioner appealed for arbitration. Petitioner had been unemployed for a number of weeks before he was reinstated to his employment position as a result of the arbitration award. During this period of petitioner's unemployment he had not received any UIB. Upon his reemployment petitioner commenced to receive UIB and failed to report that he had been reemployed to the Division of Unemployment and Disability Insurance. As a consequence of petitioner's failure to report his change in employment circumstances, he collected 17 weeks of UIB to which he was not entitled.

4. The offense was a continuous one commencing on February 3, 1979 and continuing through to May 5, 1979 on a weekly basis.

5. Petitioner's date of birth is July 26, 1952, therefore, he was 25 years of age when the UIB offense was committed. Petitioner's conduct cannot be attributable to immaturity.

6. As indicated in No. 4 above, the offense was a single continuous offense. However, subsequent to petitioner's court order to make restitution, he failed to comply with the order for a period of six years.

7. There were no social conditions advanced by petitioner which may have contributed to the offense.

8. Petitioner subsequently produced documents which demonstrated he has successfully completed: (a) a program of orientation to the Casino-Hotel Industry, Casino Cashier Skills Training; (b) Electronics Assembly; and, (c) Electronic Computer Technology (P-3). He produced no evidence of his good conduct in the community at large nor that he had engaged in any counseling with respect to his prior drug habit.

I **FIND** and **CONCLUDE** that petitioner has demonstrated some rehabilitative efforts, however, not sufficient enough to overcome the Section 86c (1) per se disqualifier. Accordingly, I **CONCLUDE** that petitioner has failed to produce sufficient evidence to meet his burden that he is, in fact, rehabilitated.

ORDER

It is therefore **ORDERED** that the application of Jackie Edwards for a casino employee license be and is hereby **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45)

days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

10 November 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11-16-88
DATE

Marianne Farina
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 16 1988
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Jackie Edwards

For the Respondent:

Jackie Edwards

EXHIBIT LIST

For the Petitioner:

P-1 Letter to Mr. Fusco from David P. Turner, Main Kitchen Chef, Trump Plaza Hotel/Casino, dated June 15, 1988

P-2 Letter addressed to whom it may concern from Maximilien Fellner, Executive Chef, Trump Plaza Hotel/Casino, dated June 16, 1988

For the Respondent:

R-1 Jersey City Police Department Arrest Slip, dated March 10, 1972

R-2 Hudson County Court, Law Division, Criminal Accusation No. 123-72

R-3 Superior Court of New Jersey, Hudson County, Law Division-Criminal, Judgment of Conviction entered on January 29, 1973

R-4 Superior Court of New Jersey, Hudson County, Law Division-Criminal Accusation 123-72, dated January 29, 1973

R-5 Demand for Refund of Unemployment Benefits

R-6 Certificate of Debt

R-7 Superior Court of New Jersey, Hudson County, Law Division, Criminal Branch, 1980 Term, Indictment No. 1150

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-218
LICENSE NO. 01972-11
OAL DOCKET NO. CCC 03182-88
ORDER NO. 89-5-10

RENEWAL APPLICATION OF

SHARON A. EISENBERG

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 1, 1989,

IT IS on this 3rd day of February 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3182-88
AGENCY DKT. NO. 88-EA-218

APPLICATION OF SHARON A. EISENBERG FOR RENEWAL OF A CASINO KEY EMPLOYEE LICENSE.

Wayne R. Rosenlicht, Esq., for the applicant (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Thomas N. Auriemma, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 13, 1988 Decided: December 21, 1988

BEFORE **RICHARD MURPHY**, ALJ:

Sharon A. Eisenberg (applicant) applies for a renewal of her casino key employee license and the Division of Gaming Enforcement (Division) takes no position on the application. The Division does, however, note some negative information which it feels raises some question as to the applicant's qualifications under N.J.S.A. 5:12-89b. At issue is whether Sharon Eisenberg has shown by clear and convincing evidence that she possesses the requisite good character, honesty and integrity for casino key employee licensure under the Casino Control Act and also whether she possesses the requisite business ability in casino experience pursuant to N.J.S.A. 5:12-89b(3). This opinion recommends that the application be granted.

PROCEDURAL HISTORY

The applicant requested a hearing on April 26, 1988 and the matter was transmitted to the Office of Administrative Law for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. on May 2, 1988. A prehearing was conducted on July 14 and the hearing was held and completed in Absecon on October 13, 1988. The due date for the initial decision was extended until December 21 due to a heavy volume of other pending matters.

FINDINGS OF FACT

The facts are not in dispute. The negative information noted by the Division arises from three incidents or transactions involving Sharon Eisenberg in her former position as Director of Credit at Tropicana. The first matter involves the applicant's alleged failure to report her observation that an individual whose credit had been suspended was gambling with another person's chips. The other two transactions raised by the Division concern the applicant's involvement while at Tropicana in decisions affecting her spouse's business interests: namely, the purchase of wallets from a company owned by him and approval of credit for a quality player brought to the Tropicana under a "splinter" agreement by Kenneth Eisenberg, the applicant's spouse. These incidents and transactions are discussed in more detail below.

The first matter involved the applicant's issuance of $100,000 in credit to Kyung Hu Paik on or about April 3, 1987. On that date, the applicant and her supervisor, Robert James, had dinner with Ms. Paik and Harry Kim, whose credit privileges had been suspended after his checks were returned without sufficient funds. There is no question that Ms. Paik had ample proven resources to warrant the granting of a $100,000 credit line. There is also no evidence that the applicant was advised by Ms. Paik or Harry Kim that the credit being extended to Ms. Paik was to be gambled with by Mr. Kim. After dinner and approval of the credit line, Harry Kim was observed by the applicant, and Robert James, to be gambling with Ms. Paik's marker, and neither took any action to stop this activity or to advise the Casino Control Commission or higher authority at the Tropicana.

The Division argues that the applicant had a duty to do so, as discussed below. Sharon Eisenberg testified that she did not see any violation in having Harry Kim gamble with the chips of Ms. Paik, whose credit had been approved. She also stated that her supervisor, Robert James, was also present during this activity and did not

view it as a violation. The Division conceded that the Commission had not, by regulation or decision, prohibited persons whose credit has been suspended from gambling with chips given to persons whose credit is approved. The Tropicana also was concerned in April of 1987 with the practice of "chip walking," whereby a person would apply for credit and then walk out the casino door without gambling. There is no evidence that there was any "chip walking" involved here and, indeed, the Division raises the matter because the applicant was gambling, not "walking" with the chips obtained on the basis of another person's credit.

The other two transactions raised by the Division involve the applicant's spouse. Sharon Altman and Kenneth Eisenberg were married on November 3, 1984, and both held casino key employee licenses. Kenneth Eisenberg had other business interests, including an import/export company then called AKI, which was on the Commission's vendor list and did approximately $200,000 business with the Tropicana. Sharon Eisenberg knew of her spouse's interest in AKI but had no direct ownership interest in it herself and was not employed by the company until after her termination by the Tropicana, when she served as a consultant before obtaining her current employment with the Showboat Hotel and Casino. Of the total of AKI business done with the Tropicana, the only matter directly involving the applicant concerned the purchase of some 1,000 eel skin wallets, which were given to casino patrons for promotional purposes. Sharon Eisenberg testified that she first saw the wallets when they were left in the possession of another Tropicana employee as a sample by Kenneth Eisenberg. She felt that this gift would be appropriate for distribution to casino patrons as part of her responsibilities as Director of Credit. She also was involved in what was known as the "comp committee,"a group of Tropicana employees who were brought together to try to cut back on comps and assess the nature and quantity of gifts being provided to patrons. The "comp committee" had no official responsibilities as to procurement. The applicant acknowledges that she learned that the wallets had been supplied by her spouse but saw no problem or conflict in urging that 1,000 be purchased by the Tropicana. This purchase was approved by the applicant's supervisor, Robert James, and later by John M. Gallaway, President of the company. The memo from Mr. Gallaway dated February 27, 1987, expressing approval of three purchase orders from AKI stated that the prices, to the extent possible, had been checked out and found to be fair, reasonable and competitive. The purchase of the wallets was later upheld and payment made after an internal investigation by Tropicana. As indicated, there is no evidence that Sharon Eisenberg was directly or indirectly involved in any other

business transaction between the Tropicana and AKI beyond the matter of the wallets.

The third questionable transaction raised by the Division also involved the applicant's spouse, who had a "splinter" agreement with the Tropicana, whereby he was paid a fee based on the amounts of casino play of any patron brought in by him. The "splinter" agreement was entered into on or about January 30, 1987, after Kenneth Eisenberg had terminated his employment with another casino. Sharon Eisenberg was aware of her spouse's "splinter" agreement with the Tropicana. In the winter or early spring of 1987, Kenneth Eisenberg spoke to Sharon Eisenberg as to the possibility of bringing in one Roger King, a wealthy television syndicator, as a Tropicana patron, and the two wined and dined Mr. King in New York City with the result that he agreed to gamble at the Tropicana. On March 10, 1987, Sharon Eisenberg granted a $100,000 credit line to Roger King, which was the maximum allowed in her position of authority. She stated that, prior to approving credit, she made a check of Mr. King's financial status and determined that he had well in excess of that amount in several bank accounts, as well as very substantial real estate holdings. Mr. King is the syndicator of such shows as "Jeopardy," "Wheel of Fortune," and "Oprah Winfrey," and is estimated to earn in excess of 100 million dollars for this contribution to American culture. Later in the evening on March 10, 1987, Roger King's credit line was increased to $200,000 based on the recommendation of Sharon Eisenberg and approval of Senior Vice President Robert James. On the same gaming day (actually March 11, 1987) Sharon Eisenberg recommended a second increase in Roger King's credit limit, this time to $250,000, which was subsequently approved by a Robert James. Problems developed when Roger King, after winning a large wager, exuberantly embraced a casino dealer, who was lifted off the floor and apparently injured. The dealer later decided to file suit. Roger King reacted by declining to pay $300,000 in counterchecks drawn on his credit account, which were returned by his bank without payment. This matter was eventually resolved, and Robert King paid off his marker and is again back at the wheels of fortune in the Tropicana, with an even higher credit limit.

The applicant did not dispute that she was aware of the Tropicana's conflict of interest policy, which states, in pertinent part:

> It is Ramada's policy to have its employees give their undivided loyalty to their jobs as measured by the highest legal and ethical standards. An individual employee shall be free of any influence, interest, or relationship which might conflict with the best interests of the company . . . A conflict of interest

> might arise where an employee, or a member of his or her immediate family, has an interest or relationship with any other party to a transaction with Ramada. (A-8) (emphasis added)

Sharon Eisenberg did not feel that her involvement with the AKI wallets or Roger King's credit line constituted a conflict of interest and stated that these transactions were done in an open fashion in circumstances where it was generally known that she was married to Kenneth Eisenberg. Because of questions concerning the AKI and King matters, as well as the Harry Kim incident, the applicant tendered her resignation to the Tropicana. After that, she worked as a consultant for AKI, until she found employment with the Showboat Hotel and Casino. No evidence was submitted of any similar problems involving the applicant at the Showboat. Several individuals, including Captain Peter Mucci, of the Atlantic City Police testified as to the applicant's good character based on their long social acquaintance.

ISSUE

The question presented is whether the applicant has shown by clear and convincing evidence her good character, honesty and integrity as required for licensing as a casino key employee under N.J.S.A. 5:12-89(b)(2).

Also listed as an issue whether the applicant has established sufficient business ability in a casino experience to show reasonable likelihood of success and efficiency in the particular position involved as required by N.J.S.A. 5:12-89(b)(3).

DISCUSSION AND CONCLUSIONS

The Casino Control Act provides that:

> [e]ach applicant for a casino key employee license shall provide such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertained to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the number 10 year period immediate preceding the filing of the application.... N.J.S.A. 5:12-89b(2) (emphases added).

Under 89b(2) the applicant must establish good character, honesty and integrity as a matter of fact and not merely as a matter of reputation. See, Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361,369 (1982), appeal dismissed 459 U.S. 1081 (1983). Applicants have been found not to have established good character, honesty and integrity as a matter of fact where there is evidence that they have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation or swindling casino patrons by altering dice. See, Alter v. Div. of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Div. of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983). It should also be emphasized that the applicant must establish good character, honesty and integrity by evidence that is both clear and convincing.

In this case, the Division takes no position on the application but raises the three matters discussed above for the Commission's consideration. With respect to the incident involving Harry Kim, the Division does not argue or cite any authority to support its contention that Mr. Kim's activities were unlawful or in violation of any regulation and that the applicant was, therefore, obligated to make a report pursuant to N.J.S.A. 5:12-80(g), which provides that:

> All licensees . . . shall have a duty to inform the Commission or Division of any action which they believe would constitute a violation of this act. . . .

The matter of whether a person whose credit is suspended can gamble on the basis of another person's credit is still an open question, as the Division concedes, and has not been decided by regulation or Commission decision. Given that, I **CONCLUDE** that the applicant was under no obligation to report the activities of Harry Kim in gambling with Ms. Paik's chips. I further **CONCLUDE** that this incident has no detrimental bearing on her good character, honesty or integrity. I also note that there was no evidence submitted that Harry Kim was engaged in the activity of "chip walking," which is problem of serious concern for casinos and the Commission. It is also apparent that there was no irregularity or impropriety in the action of the applicant in approving a $100,000 credit line for Ms. Paik, given the available financial data concerning her (A-7).

Appellant's actions and business transactions involving her spouse are more troubling in that they show a lack of sensitivity to what should have seen as, under both the Tropicana's policies and the dictates of common sense, an obvious conflict of interest. As to the eel skin wallets purchased from AKI, the applicant became involved in a purchase directly benefiting her spouse's company despite the fact

that she was fully aware of his financial interest in the matter and was not generally responsible for procurement of such items in her capacity as Director of Credit. The facts that the applicant's marriage was common knowledge and that the purchase price was later deemed to be fair and competitive, do little to ameliorate what was, at best, an appearance of a conflict of interest that Sharon Eisenberg's involvement in this purchase gave reasonable rise to. By her own testimony she was oblivious to the cloud of nepotism that ultimately was seen to cast shadows on this transaction.

Nor was the applicant sufficiently sensitive to questions of impairment of judgment and favoritism in her approval of credit for Roger King, which directly rebounded to her spouse, and indirectly to her through the marriage, as a result of the "splinter" agreement. There is, however, no basis in fact to conclude that Roger King, a multimillionaire, was a bad risk and it would be unreasonable to hold the applicant accountable for failing to foresee the peculiar and almost game-show-like events that led Roger King to temporarily decline to honor his credit obligation to the Tropicana. What the applicant should have foreseen was that, notwithstanding King's seat at the summit of an unbelievably lucrative television empire, the fact that her spouse (and she) stood to financially benefit from Roger King's gambling at the Tropicana raised at least the appearance of a conflict of interest, if not the actuality. (One wonders, of course, as to whether the Roger King incident would even be raised by the Division, had he merely been another high roller who have been lured in under a "splinter" agreement and not the defaulting patron he became after being sued by a dealer who claimed to have been injured in an impulsive celebratory grasp.) Despite the unforeseeable nature of the King incident, the fact that the applicant became directly involved in credit decisions touching on her spouses and her financial interests was not consistent with the Tropicana's conflict of interest and raises doubts as to her sensitivity to those issues. However, the fact that all of the incidents and transactions cited above occurred or were undertaken openly and in forthright manner, albeit without forethought as to the appearance of conflict of interest, suggests that the applicant's bad judgment and lack of sensitivity on these issues does not implicate on her good character, honesty and integrity so as to require denial of her application. The Harry Kim incident in no way brings into question Sharon Eisenberg's good character, honesty and integrity because the activity observed was not in violation of any regulation and this created no duty for the applicant to report. There was also no evidence that she had any knowledge of any "chip walking" by Harry Kim. The transactions with AKI and Roger King may also be fairly characterized as dealings that were openly undertaken, largely at the urging

of an entreprenurial spouse, which did not involve any actual conflict of interest in the sense that the applicant did not act in a way that resulted in foreseeable harm or impairment of Tropicana's interests. While these dealings did create an appearance of impropriety on the applicant's part, their nature was not such as to call into question her good character, honesty or integrity and I **CONCLUDE** that she has satisfactorily borne her burden of proof under N.J.S.A. 5:12-89b(2).

I further **CONCLUDE** that the applicant has established by clear and convincing evidence that she has sufficient business ability and casino experience so as to establish the reasonable likelihood of success and efficiency in the particular position involved as a casino key employee pursuant to N.J.S.A. 5:12-89b(3). She is currently the manager of Player Development at the Showboat and has functions relating to customer development, special events, splinter agents, and gift room. Certainly she has shown that she has in-depth experience in these areas and, with greater awareness and sensitivity to apparent as well as actual conflicts of interests, is reasonably likely to function successfully and efficiently.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the application of Sharon A. Eisenberg for a casino key employee license is **GRANTED**.

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

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

Dec 21, 1988
DATE

Richard J. Murphy
RICHARD MURPHY, ALJ

Agency Receipt:

12-21-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 27 1988
DATE

Ronald L. Lanka, K.S.
OFFICE OF ADMINISTRATIVE LAW

jz

WITNESSES

For the applicant:

Joseph L. Celona
Peter Mucci
Ernest R. Arrcaro
Robert Kessel
John Joseph Palmieri
Patrick Daniel Cox
Kenneth T. Eisenberg
Sharon Eisenberg

EXHIBITS

For the appellant:

A-1	Letter memo dated May 15, 1987 from Steven Bolson
A-2	Composite Splinter Agreement
A-3	Affidavit of Vince Risafi
A-4	Memo from John Gallaway dated February 27, 1987
A-5	Vendor registration for America Korea credit file
A-6	Roger King credit file
A-7	Kyung Hui Paik credit file
A-8	Ramada/Tropicana Conflict of Interest policy dated October 3, 1980, March 9, 1982, April 8, 1986, May 1, 1987, May 4, 1987
A-9	Stipulation of Settlement

For the respondent:

DGE-1	Sworn Interview of Steven Bolson dated October 9, 1987
DGE-2	Sworn interview of Steven Bolson dated October 27, 1987
DGE-3	Sworn interviews of Matthew Dziegrenuk and James R. Swan dated October 8, 1987

DGE-4	Sworn interview of Kenneth Eisenberg dated October 21, 1987
DGE-5	Sworn interview of John M. Gallaway dated October 22, 1987
DGE-6	Sworn interview of Robert M. James dated October 22, 1987
DGE-7	Sworn interview of Robert James dated November 29, 1987
DGE-8	Sworn interview of Hyong Kim dated October 21, 1987
DGE-9	Sworn interview of John Lee dated October 9, 1987
DGE-10	Sworn interview of Vincent Anthony Risafi dated November 17, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-107
ORDER NO.: 89-14-21-C
OAL DOCKET NO. CCC 176-89
(ON REMAND CCC 8475-87)

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

Complainant,

v.

ELSINORE SHORE ASSOCIATES,

Respondent.

ORDER

A Stipulation of Settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the Stipulation of Settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 29, 1989, and April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Elsinore Shore Associates (Elsinore) pay a civil penalty of $1,456.25 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to the Stipulation of Settlement, Elsinore contribute a sum not less than $13,106.25 to the Atlantic Mental Health Center, Inc.; and

IT IS FURTHER ORDERED that a letter of reprimand be issued to Elsinore for violating N.J.S.A. 5:12-119(b).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 176-89
AGENCY DKT. NO. 88-107
ON REMAND CCC 8475-87

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
ELSINORE SHORE ASSOCIATES,
Respondent.

Katherine A. Smith and Mitchell A. Schwefel, Deputy Attorneys General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Harry Jay Levin, Esq., Vice President and General Counsel, for the respondent, Elsinore Shore Associates

Record Closed: January 31, 1989 Decided: February 21, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates the Atlantis Casino Hotel, violated the provisions of N.J.S.A. 5:12-

119(b) on December 30, 1986, by permitting Debra Kim Cohen, a minor, to gamble in its casino.

PROCEDURAL

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Elsinore Shore Associates (Elsinore) filed an Answer to the complaint on November 18, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on July 1, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 22, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 22, 1988.

The within matter was remanded to the OAL for further proceedings by Order of the Commission on November 3, 1988. On December 20, 1988, the parties submitted another proposed settlement agreement. The record closed on January 31, 1989, upon receipt of the remanded file.

FINDINGS OF FACT

The Division and Elsinore have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND**:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as if set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

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

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the 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 **CASINO CONTROL COMMISSION** for consideration.

2-21-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2-21-89
DATE

William H. Fauver
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 24 1989
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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Attorney for Respondent
Elsinore Shore Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 88-107
OAL DKT. NO. 08473-87

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT Complainant, vs. ELSINORE SHORE ASSOCIATES Respondent.	STIPULATION OF FACTS AND SETTLEMENT

The matters in the above-captioned matter having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, attorney for Complainant, State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement by Katherine A. Smith, Deputy Attorney General and Mitchell A. Schwefel, Assistant Attorney General, and Harry Jay Levin, Esquire, Vice President and General Counsel for Respondent, Elsinore Shore Associates, t/a Atlantis Casino Hotel, it is hereby stipulated to and agreed by and among the parties as follows for purposes of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement, now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1 et seq., hereinafter "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Elsinore Shore Associates, t/a Atlantis Casino/Hotel (hereinafter called "Atlantis"), is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at times referenced herein had its principal place of business located at 2500 Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Atlantis is now the holder of a casino licensee issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said licensee was issued and became effective on April 13, 1982 and

has been renewed annually. Atlantis has been conducting its casino hotel-operations pursuant to said license continually to date since that time and including all times referenced hereunder.

4. Atlantis is the holder of, and operates pursuant to, a Certificate of Operation effective April 10, 1981. Said Certificate of Operation entitles Atlantis to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

5. On December 30, 1986 Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Atlantis' casino room and gambled for approximately 4 (four) hours at Blackjack Table 07 in Pit D. During this 4 hour period, Atlantis casino floor personnel observed Debra Kim Cohen playing blackjack and rated her blackjack play. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of the Atlantis player rating slip, dated December 30,1 986 for Debra Kim Cohen, a/k/a Kim Cohen.

6. By letter dated November 25, 1986, and received by Atlantis, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Atlantis that Debra Kim Cohen had gambled at the casino, and requested of Atlantis that further attempts by Ms. Cohen to gamble therein should be prevented. Enclosed in the letter from Mr. Press was a photograph of Debra Kim Cohen. Upon receipt of the letter from Mr. Press, Atlantis' Legal Department transmitted the letter to its Security, Surveillance and Casino Departments. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of the November 25, 1986

letter from Mr. Press to Atlantis. Attached hereto and made a part of the record hereof as Exhibit D is a true and correct copy of the photograph of Debra Kim Cohen which was enclosed in the letter referenced as Exhibit C.

7. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

> Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino room is a disorderly person...

8. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino to gamble on December 30, 1986, as set forth more fully herein, notwithstanding the fact that Respondent was notified by Mr. Richard Press that Debora Kim Cohen was a minor and that, as a consequence, she not be permitted to gamble at the Atlantis, Respondent Atlantis violated N.J.S.A. 5:12-119(b).

9. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following exhibits:

(a) Certification of Harry Jay Levin, Esq. Vice President and General Counsel of Atlantis Casino Hotel as Exhibit E.

(b) Certification of Walter Tirell, Director of Security of Atlantis Casino Hotel as Exhibit F.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that the Commission may impose a letter of reprimand or censure against Respondent Atlantis, which letter or censure shall be made a

permanent part of the file of Respondent Atlantis, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130.

2. The parties further agree that the Commission may impose a civil penalty of up to $14,562.50 against Respondent Atlantis if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130.

3. The parties further agree that to the extent that any civil penalty imposed by the Commission against Respondent Atlantis is less than $14,562.50, Respondent Atlantis shall contribute the difference between $14,562.50 and the amount of any civil penalty to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

4. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's compliant.

5. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation of Fact and Settlement.

Respectfully submitted,

CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of New Jersey

Date: Dec. 14, 1988

By: _____
Mitchell A. Schwefel
Assistant Attorney General

Attorney for Respondent
Elsinore Shore Associates

Date: December 20, 1988

By: _____
Harry Jay Levin
Vice President and General
Counsel

mv
Date:
120288/10

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-235
APPLICATION NO. 70614-21
REGISTRATION NO. 85709-40
OAL DOCKET NO. CCC 3461-88
ORDER NO. 89-18-13

APPLICATION OF RONALD ERNST
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1989,

IT IS on this 19th day of May 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Ronald Ernst is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

ORDER NO. 89-18-13

IT IS FURTHER ORDERED that this denial shall not affect Ronald Ernst's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3461-88
AGENCY DKT. NO. 88-EA-235

RONALD ERNST,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Ronald Ernst, petitioner, pro se

Norma Stancil, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: February 7, 1989 Decided: March 27, 1989

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

STATEMENT OF THE CASE

Ronald Ernst (petitioner) seeks licensure as a casino employee under the Casino Control Act (N.J.S.A. 5:12-1 et seq). By letter report to the Casino Control Commission, dated March 17, 1988, the Division of Gaming Enforcement (respondent) objected to the application for licensure, based in part upon the petitioner's criminal record. The issue to be resolved is as follows:

> Whether the petitioner has established by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure by Sections 89b(2) and 90b of the Casino Control Act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on his license application was received by the Casino Control Commission on May 3, 1988. On May 9, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted by Administrative Law Judge Edgar R. Holmes on August 16, 1988.

The hearing in this matter was conducted by the undersigned as scheduled on October 6, 1988. Following the hearing, the record remained open to permit the Division of Gaming Enforcement to submit a letter from the Hudson County Probation Department and to permit the petitioner to submit a letter concerning his out-patient drug counseling. The petitioner had no objection to the subsequently submitted letter from the Hudson County Probation Department and it was admitted into evidence as Exhibit R-11 on December 1, 1988. However, the respondent objected to admission into evidence of an undated letter of one James Valdora (Exhibit P-4 for identification) concerning petitioner's attendance at Alcoholic's Anonymous (AA) meetings, which letter was submitted by petitioner following the hearing.

The Division asserted that the letter in question did not have evidentiary value, contending that it lacked specificity to substantiate the petitioner's attendance in an appropriate program. The Division also challenged the composition of the letter, asserting that it had been written by the petitioner himself. Pursuant to N.J.A.C. 1:1-15.6, when a party raises a genuine question concerning the authenticity of a document, the judge may require further authentication of the questioned document by affidavit or certification. By letter dated December 1, 1988, I requested that the petitioner submit some proof of the authenticity of the Valdora letter. No such proof was submitted. By letter dated February 7, 1989, the parties were advised that the requested proof had not been submitted and that the document could not be admitted into evidence. The parties were further advised that the record in this matter was closed as of that date.

FINDINGS OF FACT

The facts material to disposition of this matter are essentially undisputed. The petitioner is a 23-year-old resident of Smithville, New Jersey. In February 1988, he successfully completed a 240 hour craps dealer course given by the Casino Career

Institute. A letter from Sonny Merlette, Assistant Director of Gaming Instructions at the Institute was admitted into evidence as Exhibit P-1. Mr. Merlette attested to the petitioner's sound character and positive attitude.

At the time of the hearing in this matter, the petitioner had been employed as a cook at the Sands Hotel and Casino for three months. He works on the 3:00 p.m. to 11:00 p.m. shift five or six days per week. The petitioner has received on-the-job training at the Sands and he frequently works overtime hours. According to the petitioner, he has had no problems with anyone at the Sands.

Division of Gaming Enforcement Agent Mary Jo Bartzak testified that she conducted a personal interview of the petitioner on July 21, 1987. At that time, Ms. Bartzak questioned the petitioner concerning two arrests which he had listed on his Personal History Disclosure Form filed with the Casino Control Commission in February 1987 (Exhibit R-10). The petitioner was arrested on January 18, 1986, by the Bayonne police and charged with possession of a controlled dangerous substance (PCP), possession of marijuana under 25 grams, and possession of PCP with intent to distribute (Exhibit R-2). The police investigation report (Exhibit R-1) indicated that the petitioner was observed driving a vehicle and smoking what appeared to be a marijuana cigarette. Packets of PCP were found in the vehicle and the petitioner had on his person a manilla envelope of marijuana. One of the petitioner's passengers also had on his person a manilla envelope of marijuana.

The petitioner was subsequently indicted in the Superior Court of New Jersey, Hudson County, on charges of possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20(a)1 and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19(a)1 (Exhibit R-3). On July 16, 1986, the petitioner was declared a first offender and was placed on probationary supervision for one year (Exhibit R-4).

Testifying at the hearing, the petitioner acknowledged the foregoing arrest. However, he initially stated that he had not been driving and that he had not been smoking marijuana at the time he was arrested. The police came to his house shortly after he had parked the vehicle. The petitioner acknowledged that he did have in his possession an envelope with marijuana. However, he stated that the envelopes of PCP were not his. He understood his one-year probation to require that he stay out of trouble and stay in contact with the probation department. If he so complied, the charges were to be dropped.

The petitioner admitted that he did not comply with the terms of probation. After eight or nine months, he no longer maintained contact with the probation department. The petitioner explained that it was a bad time in his life. He had "no grasp on reality" and was in and out of jobs with no career opportunities. The petitioner admitted "getting high" during that time.

The petitioner's next arrest occurred in January 1987 (Exhibit R-7) when he was stopped by the New Jersey State Police for a motor vehicle violation. The trooper's check of the petitioner's driver license revealed that it was suspended for failure to appear in Bayonne City Municipal Court and there were two active warrants for the petitioner's arrest as a result. According to the trooper's investigation report (Exhibit R-6), the petitioner's mother answered both municipal court warrants, the petitioner was released, and the case was closed. The petitioner testified at the hearing that he had no idea he had been driving on the suspended list and that he had not received notice to appear in the municipal court.

The petitioner was next arrested on June 12, 1987. He was charged by the Bayonne police with possession of a controlled dangerous substance (angel dust), in violation of N.J.S.A. 24:21-20(a)(1). In his investigation report (Exhibit R-8), the arresting officer stated that he observed the petitioner rolling a joint which was later determined to be PCP. The municipal court complaint against the petitioner for this offense was admitted into evidence as Exhibit R-9.

The petitioner's original first offender probation was to have been completed on July 16, 1987. When Agent Bartzak contacted the Hudson County Probation Department, she learned that the petitioner's probation had been completed unsatisfactorily, due to his failure to report and his subsequent arrest on June 12, 1987. Ms. Bartzak stated that she then contacted the Bayonne Municipal Court to inquire about this second drug possession arrest. She was told that the matter had been postponed and that there was a warrant out for the petitioner's failure to appear. Ms. Bartzak then contacted the petitioner on September 14, 1987, and asked him about the matter. According to Ms. Bartzak, the petitioner told her that she should call his drug counselor, Mr. Hartnit.

Ms. Bartzak telephone Mr. Hartnit, who advised that the possession of PCP charge of June 1987 had been downgraded to a disorderly persons offense and that the petitioner was required to go to drug rehabilitation counseling. When the

petitioner had not reported as he was supposed to, Mr. Hartnit put out a warrant for his arrest. When Ms. Bartzak again contacted the petitioner, he advised her that he had recently learned about the warrant because it had led to his arrest when he was stopped for a traffic violation by the Fairfield police. The petitioner told Ms. Bartzak that he spent three days in jail on the arrest for contempt of court and was bailed out by his boss for $500.

Because the petitioner did not satisfactorily complete his original one-year probation in the suspended proceedings program arising from his 1986 indictment, he was required to return to court for resentencing on October 14, 1987. Indicating in his statement of reasons that the petitioner was being given one more chance to straighten out his life, Superior Court Judge Maurice A. Walsh, Jr., sentenced the petitioner to a term of probation of three years on condition that the petitioner attend out-patient drug counseling selected and closely monitored by the probation department. The court also indicated that a violation of probation would be dealt with sternly (Exhibit R-5).

The petitioner also was required to appear in Bayonne Municipal Court concerning the subsequent possession of CDS charge arising from his arrest on June 12, 1987. On November 2, 1987, the petitioner entered a plea of guilty to the downgraded disorderly persons charge. He was fined $150 and placed on probation for a period of six months (Exhibit R-9). This probation is to run concurrently with the three-year probation imposed in Superior Court on October 14, 1987.

The petitioner acknowledged that he is on probation until October 1990. He stated that he is required to visit the probation officer once a month and he must not have any further arrests. According to the petitioner, he also must attend out-patient drug counseling "approximately two days a week," for two hours each day. The petitioner stated that he attends these drug counseling sessions in Bayonne, New Jersey.

It was the petitioner's testimony that he used drugs for approximately three years, although not consecutively. When asked the frequency of his drug use, the petitioner answered, "at one point maybe once a month, then right before I got arrested maybe a couple times a week." The petitioner stated at the hearing that he had not used drugs for approximately a year and one-half. The petitioner testified that his group counseling sessions have improved his feelings of self-esteem. He feels more productive at his job and he now wants to get somewhere in

life. The petitioner feels that he has grown up a lot in the last two years. He knows that he made bad choices at a vulnerable time in his life and he feels that he has come out of the situation a stronger person.

Debra Illing testified on behalf of the petitioner. The petitioner resides in her home. She has known him for three years and it was her testimony that he has made drastic and positive changes in his life during the past year and one-half. According to Ms. Illing, the petitioner realizes his past mistakes and is now much more responsible. She has never seen him use drugs.

Finally, a letter from Probation Officer Jack J. McCole of the Hudson County Probation Department was admitted into evidence on December 1, 1988, as Exhibit R-11. The letter notes that the petitioner was placed on probation for possession of a controlled dangerous substance for three years, beginning October 14, 1987. A probationary period of six months on another charge of possession of a controlled dangerous substance was to run concurrent with the previous term of probation, beginning November 2, 1987. Officer McCole further advised, "probationer states that he attends N.A. meetings but at the present time I have no verification of attendance even though I have asked for it." The petitioner was afforded an opportunity to object to admission of this letter and to offer any argument concerning its significance. However, no objection or argument was received from the petitioner. As noted previously, the petitioner failed to submit the required authentication for a letter purporting to be from one James Valdora (Exhibit P-4 for identification), and this letter concerning the petitioner's attendance at A.A. meetings was not admitted into evidence.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino employee license must demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the Act.

The undisputed facts in this matter reveal a chain of events adverse to the petitioner which stem from his involvement with drugs. His first arrest for drug possession occurred in January 1986 when he was 20 years old. In his Personal History Disclosure Form, the petitioner revealed this arrest but in an explanatory note stated that he was "not aware that drugs were in the car." The petitioner also noted his willingness to submit to a drug test. At the hearing, the petitioner acknowledged that he had marijuana in his possession at the time of that arrest. Perhaps when the petitioner included the note in his Personal History Disclosure Form he drew some distinction between marijuana and PCP, which he was also charged with possessing. In any event, the petitioner's testimony concerning the circumstances of this arrest impressed me as being less than completely candid.

The petitioner was afforded first offender status and was placed under probationary supervision for one year. However, he did not satisfactorily complete the term of probation. He failed to report as required and he was also subsequently arrested on another drug possession charge on June 12, 1987. As a result of these difficulties, the petitioner was placed on a three-year term of probation beginning October 14, 1987. He is required to attend out-patient drug counseling which is to be closely monitored by the probation department.

The petitioner's probation is not scheduled to end until October 1990. According to his probation officer, verification of the petitioner's attendance at drug counseling meetings has been requested but it has not been supplied. The petitioner testified that he has attended counseling sessions and has benefited from them. However, the petitioner has failed to provide any other admissible evidence which establishes the frequency of his attendance at any out-patient drug counseling program.

The credible evidence in the record establishes that the petitioner is well thought of by a number of individuals. He appears to be working satisfactorily as a cook in an Atlantic City casino hotel. However, given his previous problems complying with terms of probation and the present failure to verify his compliance with the terms of his probationary period which is not scheduled to end until October 1990, I must **CONCLUDE** that the petitioner has failed to establish by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for licensure as a casino employee should be denied.

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OAL DKT. NO. CCC 3461-88

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ronald Ernst for licensure as a casino employee be **DENIED**.

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

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

March 27, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3/27/89
DATE

Marianne Farone
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 30 1989
DATE

Jayne LaVecchia/MS
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For petitioner:

P-1	Letter from Casino Career Institute, dated October 5, 1988
P-2	Letter from Albert J. Sheppard, dated October 3, 1988
P-3	Petitioner's art work
P-4	Not in evidence

For respondent:

R-1	Bayonne Police Investigation Report, dated January 18, 1986
R-2	Bayonne Police Arrest Report, dated January 18, 1986
R-3	Indictment #404 04 86
R-4	Order of Commitment to Probation Supervision, dated July 16, 1986
R-5	Judgment of Conviction and Probationary Sentence, dated October 14, 1987
R-6	New Jersey State Police Investigation Report, dated January 30, 1987
R-7	New Jersey State Police Arrest Report, dated January 30, 1987
R-8	Bayonne Police Investigation Report, dated June 12, 1987
R-9	Complaint, dated June 12, 1987, and disposition, dated November 2, 1987
R-10	Personal History Disclosure Form
R-11	Letter from Hudson County Probation Department, dated October 6, 1988

WITNESSES

For petitioner:

Ronald Ernst
Debra Illing

For respondent:

Mary Jo Bartzak
Ronald Ernst

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-339
REGISTRATION NO. 57565-40
OAL DOCKET NO. CCC 4399-88
ORDER NO. 89-6-13

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

Complainant,

v.

JOSE ESTRADA,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of February 8, 1989, and March 8, 1989,

IT IS on this 28th day of April 1989, ORDERED that the initial decision is modified as follows:

> To include reference to the respondent's 1985 conviction for conspiracy to commit burglary and theft, and to include reference to the 1983 charge against respondent of receiving stolen property, which charge was later dismissed. Both of these incidents were inadvertently omitted from the initial decision; and

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino employee license and

casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /C.A.

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4399-88
AGENCY DKT. NO. 88-339

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JOSE ESTRADA,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Jose Estrada, respondent, pro se

Record Closed: November 16, 1988 Decided: December 28, 1988

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Jose Estrada, respondent, is registered with the Casino Control Commission (Commission) as a casino hotel employee pursuant to N.J.S.A. 5:12-91. On October 31, 1983 and on September 9, 1985, the respondent was convicted of burglary contrary to N.J.S.A. 2C:18-2. At the sentencing hearing on one of the two offenses, accompanying theft charges were dismissed. In the other sentencing hearing, the defendant was also sentenced for a fourth degree theft. The Division of Gaming Enforcement (Division), by virtue of N.J.S.A. 5:12-86g, seeks to prove the underlying facts constituting theft which accompanied the burglary charges in order to

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disqualify the respondent from casino hotel registration pursuant to N.J.S.A. 5:12-86c, which enumerates disqualifying offenses. Burglary less than third degree is not a disqualifying offense. Theft in the third degree is a disqualifying offense. Section 91b of the Casino Control Act (Act) permits revocation of a registration for conduct or offenses described in section 86c.

The Division complaint seeking revocation was filed May 3, 1988. The respondent requested a hearing. On June 7, 1988, the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in Atlantic City on August 16, 1988 and three issues to be resolved at the hearing were identified as follows:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-3 on July 12, 1985.

B. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-3 on October 20, 1983.

C. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Act.

At the hearing on November 4, 1988, the Division withdrew issue A.

The record was reopened on December 12, 1988 for 10 days because judicial notice was taken of a statute pursuant to Evid. R. 9 (1) and N.J.A.C. 1:1-15.2(c). The Evidence Rule mandates that notice be taken of statutes. The Administrative Code requires the judge to alert the parties when he does take judicial notice of a statute.

SUMMARY OF STATE'S EVIDENCE

The Division relied on the indictments filed against the respondent, his records of conviction, and the respondent's own testimony. The evidence adduced shows that the respondent stole the entire contents of a private residence and hid it

in the woods where the police discovered it. This occurred on August 14, 1983. He was convicted of the burglary on October 31, 1983.

Five days later, on August 19, 1983, the respondent committed another burglary to which he pled guilty on September 9, 1983. This burglary included a fourth degree theft.

None of these dates coincide with the date of October 20, 1983, which is the date of the offense according to the prehearing Order. Nevertheless, the respondent knew exactly which offenses the Division was relying upon to revoke his registration. He described the factual basis of the August 14, 1983 burglary and he denied committing the August 19, 1983 burglary. In that case he claimed he was in a car with two friends and the stolen items were found in the trunk. He claimed he was surprised. Nonetheless he pled guilty to that charge.

The respondent acknowledged that he had a shoplifting charge in May of 1983 in Egg Harbor City. He also admitted a minor drug offense in August of 1984. He then submitted that he stopped smoking marijuana about a month ago. This completes the respondent's criminal history and the Division's proofs.

DISQUALIFICATION CRITERIA

The complaint and the prehearing Order both refer to the date of October 20, 1983 as the operative date for the commission of the offense (Order) or the date of the conviction for the offense (complaint). The proofs do not conform to this date. Nevertheless, it was clear that the respondent knew that burglary and theft charges were the conduct complained of by the Division.

There is no proof however, that the respondent committed a disqualifying offense. For burglary to be a disqualifying offense, it must be in the second degree. N.J.S.A. 5:12-86c (1). For burglary to rise to a crime of the second degree, it must be committed while armed or the burglar must threaten, attempt, or commit bodily harm. N.J.S.A. 2C:18-2. There was no proof that respondent was armed or that he confronted a victim at the scene.

For theft to be a disqualifying offense, it must rise to the level of a second or third degree crime. Except for certain acts not relevant here, theft is graded by the value of the items stolen. N.J.S.A. 2C:20-2b. Third degree theft requires a value in excess of $500. No value was proved in this case. I cannot assume that the value exceeds $500, only that the stolen items have some value. *State v. Lopez*, 160 N.J. Super. 30 (App. Div. 1978) 33-35.

While there is no question that the respondent was convicted of two burglaries and moreover, in the course of those two burglaries, that he committed two thefts, the proofs do not rise to the level required for a disqualification offense.

I therefore **CONCLUDE**, that the Division has failed to prove by a preponderance of the credible evidence that the respondent has committed acts which constitute a statutory disqualifier.

REHABILITATION AND INIMICALITY

The prehearing order lists rehabilitation as an issue just in case the State was able to prove that the respondent committed a disqualifying offense. Proof of rehabilitation permits a registrant who has been convicted of a disqualifying offense or who has been shown to have committed a disqualifying offense to escape the onus of revocation. N.J.S.A. 5:12-91d.

Rehabilitation also applies where the issue of inimicality is raised. *Donna Davis v. Division of Gaming Enforcement*; 8 N.J.A.R. 301 (1986).

Inimicality has been defined in the cases.

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

> regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. In re *Resorts Casino Application* 10 N.J.A.R. 244 (1979) 254.

The issue of inimicality was not raised in this case; not in the complaint, not in the prehearing order, not at the conclusion of the case.

However it is clear that inimicality should have been an issue in this case. Can an administrative law judge raise the issue sua sponte?

New Jersey Evid. R. 9 (1) mandates that judicial notice of statutory law be taken without request by a party. Comment 2 of this rule of evidence states that judicial notice must be taken of the enumerated sources of law. There is a presumption that a court will either know, or know where to find, the law of the jurisdiction.

In *B.J.L. Leasing Corp v. Whittington,* 204 N.J. Super. 314 (1985), plaintiff's attorney failed to bring to the attention of the court the full text of a statutory provision relating to leases as security interests. The court held that despite the attorney's failure to bring the provision to the attention of trial judge, the judge was nevertheless bound by Evid. R. 9(1) to apply the statute. Id. at 320-321.

In *Weeks v. Newark,* 62 N.J. Super. 166 (App. Div. 1960), neither party brought to the attention of the court a specific statutory provision. Despite the fact that the court stated that the particular statute "seems to have escaped the research of both sides" it took judicial notice of that provision. Id. at 181.

While the Uniform Administrative Procedure Rules (UAPR) indicate that parties are not bound by New Jersey Rules of Evidence except as incorporated in the UAPR, N.J.A.C. 1:1-15.1, the Evidence Rules should be utilized when and where they contribute to a complete and just disposition of the rights, duties, and obligations of all the parties. In this case the ultimate issue is the respondent's fitness for licensure. That was clear from the complaint, the prehearing order, and the conduct of the trial. It is also abundantly clear from the declaration of policy and legislative findings enumerated at N.J.S.A. 5:12-1. Subsection b (8) thereof requires

that casino employee " ... registration ... be solely conditioned upon the individual qualifications of the person seeking such privilege." Accordingly, I take judicial notice of relevant portions of the "inimicality" subsection of N.J.S.A. 5:12-86c as follows:

> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations;..."

RESPONDENT'S TESTIMONY

The respondent offered little evidence of rehabilitation. He was a trustee at the Atlantic County Jail and worked on a program beautifying Atlantic City. He was unable to obtain letters from persons who supervised him. He claimed he had no friends at present and that letters from former friends would not be of any value. He did claim that he was no longer engaged in criminal activity. He said that in the past he was young and single and misspent his time. Now he is 28 years old. Now he is married. He and his wife have two children and she brought two children into the marriage. She said he supports them all. He has direct deposit of his paycheck so she has control of his money. She claims he is a good husband, father and provider. She said he has completed probation and paid his fine. It was evident from his and her demeanor that the retention of his registration was of paramount concern to them.

REHABILITATION CRITERIA

Rehabilitation factors set forth in the Act are considered as part of the inimicality analysis *Davis*, supra. 314. They include: (1) the nature and duties of the registrant's position; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the registrant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional

work-release programs, or the recommendation of persons who have or have had the registrant under their supervision. N.J.S.A. 5:12-91d.

I **FIND** as follows:

(1) The respondent is a supervisor of a cleaning crew and has minimum contact with casino patrons.

(2) The offenses are burglary and theft. They are serious crimes and evidence a callous disregard for the rights of others.

(3) The circumstance of one of these burglaries is remarkable. The respondent, who had no vehicle at the time, removed the entire contents of a home to a nearby woods; no doubt intending to return for them at a later date.

(4) The burglaries and thefts occurred on August 14, 1983 and August 19, 1983.

(5) The respondent was 23 at the time of these offenses.

(6) Except for a shoplifting charge in May 1983, these are the only offenses involving dishonesty appearing on the respondent's record. He has a minor marijuana offense in 1984.

(7) There was no evidence that social conditions contributed to the offense or conduct.

(8) The respondent paid his fine, served his sentence, and was a trustee. He is presently employed in a casino hotel. He supports his wife and four children satisfactorily.

The nature of these offenses cannot be disregarded. To remove the entire contents of a private home to a nearby woods for later disposal is a continuing criminal enterprise of some duration. There is no mistaking the intent. It is to deprive another of his property. The respondent has committed thefts on three occasions. It is true he has not been convicted of a crime since October 31, 1983

more than five years ago. His marriage and family responsibilities have steadied him. He was unable, however, to obtain letters of recommendation from persons who have supervised him since that time. Based on this record and the failure of the respondent to affirmatively demonstrate rehabilitation, I reluctantly **CONCLUDE** that the continued registration of the respondent would be inimical to the casino control act and to gaming operations. My reluctance is occasioned by the certainty I feel that this family is only sustained by the respondent's casino hotel income. I am equally certain however that the respondent is capable of theft and thus is a danger to the casino industry or its patrons.

ORDER

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

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

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

December 23, 1988
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12-29-88
DATE

Marianne Farrow
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 29 1988
DATE

Ronald J. Parks/K. S
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Jose Estrada

For the Respondent:

Jose Estrada
Patricia Estrada

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 Judgment of Conviction
P-3 Indictment
P-4 Judgment of Conviction

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-163 AND 88-EA-120
APPLICATION NO. 69078-22
REGISTRATION NO. 42418-40
ORDER NO. 89-16-10
OAL DOCKET NO. CCC 624-88

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

Complainant,

v.

MARY L. FERRY,

Respondent.

AND

APPLICATION OF MARY L. FERRY

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record in this matter at its public meeting on April 19, 1989,

IT IS on this 16th day of May 1989, ORDERED that the ALJ's recommendation to dismiss the Division of Gaming Enforcement's complaint for revocation of Mary L. Ferry's casino hotel employee registration on the grounds that she has overcome the disqualifying conduct alleged against her is adopted; and

IT IS FURTHER ORDERED that the initial decision is modified to permit Mary L. Ferry to withdraw her application for a casino employee license subject to the restriction that, pursuant to N.J.S.A. 19:41-8.6(a), Ms. Ferry is not eligible to apply for or obtain any license, qualification or approval required under the Casino Control Act until one (1) year has elapsed from the date of the Commission action in this matter; and

IT IS FURTHER ORDERED that this restriction against reapplication for licensure, qualification or approval shall not affect the applicant's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and N.J.S.A. 5:12-91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 624-88
AGENCY DKT. NOS. 88-163
AND 88-EA-120

NEW JERSEY DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARY LOU FERRY,
Respondent,
and
APPLICATION OF MARY LOU FERRY
FOR A CASINO EMPLOYEE LICENSE

Mitchell Schwefel, Assistant Attorney General, for petitioner (Peter N. Perretti, Jr. Attorney General of New Jersey, attorney)

Frank J. Ferry, Esq., for respondent

Record Closed: October 21, 1988 Decided: February 23, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) seeks to revoke the casino hotel employee registration of respondent Mary Lou Ferry and also objects to her application for a casino employee license.

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PROCEDURAL ASPECTS

The Casino Control Commission (Commission) transmitted the herein matter, on January 25, 1988, to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 5, 1988 at which, among other things, the issues to be determined by this tribunal were agreed upon and the hearing date of August 25, 1988 was established. The August 25, 1988 hearing was adjourned and actually was held on October 21, 1988 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. Extensions for the execution of the herein initial decision were requested and granted.

ISSUES TO BE DETERMINED

The issues to be determined by this tribunal and as agreed upon at the prehearing conference are these:

1. Whether the registrant failed to cooperate with the Division in violation of N.J.S.A. 5:12-78, 89b, and 80d?

2. Whether the registrant has failed to provide complete and accurate information to the Division and, therefore, should be disqualified under N.J.S.A. 5:12-86b?

3. Whether, in light of issues (1) and (2) above, the registrant/applicant has established the requisite reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b(2)?

MOTION

The Division moved before this administrative tribunal to withdraw its letter of objection to respondent's casino employee license and its complaint concerning respondent's registration, without prejudice, based upon two considerations; namely: (1) That respondent had cooperated with the Division and supplied it with the requested documentation and, that respondent was willing to subject herself to a sworn statement at the Division's direction; (2) That respondent no longer wishes

to remain in the casino industry either as a registrant or as a licensed casino employee and voluntarily withdraws from same for a period of three years.

TESTIMONIAL EVIDENCE

Respondent, Mary Louise Ferry, testified, among other things, that she is presently employed as the office administrator and sales person at Jean Farley Realty, which constitutes a new career for her. She asserted that she voluntarily withdraws her casino hotel registration and her application for a casino employee license and further, that she will not apply for registration or licensure for a term of three (3) years from the date the Commission takes action on the herein matter.

FINDINGS OF FACT AND CONCLUSIONS

Based upon the Division's application and the supporting testimony adduced by respondent Mary Lou Ferry, I **FIND** that respondent has cooperated with the Division to the extent that the Division's representatives requested same. I further **FIND** that respondent voluntarily withdraws her present casino hotel registration as well as her application for a casino employee license.

Accordingly, I **CONCLUDE** that the instant matters be and hereby withdrawn and, therefore, no longer contested cases before the Office of Administrative Law.

DISPOSITION

It is hereby **ORDERED** that the Division of Gaming Enforcement complaint against respondent Mary Lou Ferry's casino hotel registration and its objection against her casino employee license is hereby **DISMISSED WITHOUT PREJUDICE**.

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

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

23 February 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

2/28/89
DATE

[illegible]
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 28 1989
DATE

[illegible] /KS
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Mary Lou Ferry

For the Respondent:

Mary Lou Ferry

EXHIBIT LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-118
LICENSE NO. 76908-21
REGISTRATION NO. 75577-40
OAL DOCKET NO. CCC 8835-88
ORDER NO. 89-20-19

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

Complainant,

v.

ROGER D. FORD,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 17, 1989,

IT IS on this 28th day of June 1989, ORDERED that the initial decision is modified as follows:

> When determining whether conduct is disqualifying, the administrative law judge should have considered, in addition to standards set forth in In re Resorts Casino Application, 10 N.J.A.R. 244 (1979), the rehabilitation factors of N.J.S.A. 5:12-90(d) and 90(h). Application of Donna Davis, 8 N.J.A.R. 301, 313 (1985).
>
> Utilization of the rehabilitation factors provides a more structured, yet flexible, framework for analyzing the facts of any case to determine whether the offender is suitable for

licensure or registration under the Act. Application of Edward Bershad Company, t/a Penn Vending Company for a Casino Service Industry License, _____ N.J.A.R. _____ (Commission Decision, March 28, 1989).

Explicit delineation of the rehabilitation criteria and the application of each factor to the facts of the case ensures a thorough assessment of the pertinent evidence and enhances the Commission's ability to determine whether the recommendation contained in the initial decision is supported by a preponderance of the credible evidence in the record. DeVitis v. New Jersey Racing Commission, 202 N.J. Super. 484 (App. Div., 1985)

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 1/4

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8835-88
AGENCY DKT. NO. 89-118

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ROGER D. FORD,
Respondent.

Charles Kimmel, Deputy Attorney General, for petitioner
(Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Roger D. Ford, respondent, pro se

Record Closed: March 30, 1989 Decided: April 3, 1989

BEFORE **LILLARD E. LAW,** ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on November 2, 1988, seeking revocation of respondent Roger D. Ford's casino employee license and his casino hotel employee registration grounded, in part, upon the Division's allegation that respondent had been arrested and charged with Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3, therefore, making respondent ineligible for continued licensure and registration in the casino industry.

PROCEDURAL HISTORY

On November 5, 1988, respondent requested a hearing. On November 27, 1988, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 26, 1989, Administrative Law Judge Beatrice S. Tylutki presiding, at which, among other things, the issues to be resolved at the hearing were set forth and the hearing date of March 30, 1989 established. The hearing was held on March 30, 1989 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey, The record in this matter was considered closed on that date.

MOTION TO AMEND PREHEARING ISSUES

Upon opening the hearing record, the Division propounded an oral motion to amend the Issues as set forth in the Prehearing Order dated January 27, 1989. Respondent did not object to the motion, therefore, the motion was granted and the issues to be resolved by this tribunal, as amended, are as follows:

A. Whether respondent's continued licensure and/or registration would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(2), as a consequence of his conviction of a violation of N.J.S.A. 2C:20-3 and the circumstances surrounding that violation?

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

FINDINGS OF FACT

The relevant and material facts in this matter are neither contested nor in dispute. Therefore, based upon the pleadings, respondent's testimony and the single document marked into evidence, I make the following **FINDINGS OF FACT**.

Respondent, Roger Devoy Ford, is eighteen years of age and is currently the holder of casino employee license no. 76908-21 and casino hotel employee registration no. 75577-40. On or about July 30, 1988, respondent was arrested while employed and working at the Showboat Hotel Casino in Atlantic City, New Jersey. The arrest occurred between 6:00 p.m. and 6:15 p.m. where it was alleged that respondent, who was performing the duties of a coin booth cashier, removed $60 from his cash drawer and placed the money in his street shoe. Respondent was observed by the casino's surveillance department where the act was video taped and he was subsequently charged with violating N.J.S.A. 2C:20-3, Theft by Unlawful Taking. On December 12, 1988, respondent entered a plea of guilty to a N.J.S.A. 2C:20-3 offense before the Atlantic City Municipal Court for which he was fined $25, plus $25 in court costs, and a $30 penalty to the Violent Crimes Compensation Board (VCCB) (P-1).

Respondent's casino employee license and casino hotel registration is presently under suspension by Order of the Commission. His "21" license entitles respondent to be employed in the casino industry as a slot attendant, booth cashier or security guard. He is presently unemployed while living with his mother in Atlantic City. Respondent's mother is also unemployed and in receipt of welfare grants in aid for her subsistence.

TESTIMONIAL EVIDENCE

Respondent testified both for the Division and on his own behalf. In his defense, respondent asserted that on July 30, 1988, while on duty at the Showboat Hotel Casino, he had asked his supervisor if he could get his paycheck early that day. The supervisor advised respondent that he could not get his paycheck before the date and time they were transmitted to all the employees. Respondent asserted that he needed money to purchase sneakers for his brother who was serving a jail sentence on a drug conviction.

Respondent testified that he had been informed by a fellow employee as to a method to cover a shortage of money from the coin booth without immediate detection by the casino authorities. He employed the method, without success.

DISCUSSION AND CONCLUSIONS
Section 86c(2)

The statutory provision at N.J.S.A. 5:12-86c(2) is commonly referred to as the "inimical clause" of the Casino Control Act (Act). The standards by which section 86c(2) are to be applied in individual cases where a determination is to be made as to whether an offense is inimical to the purposes and policies of the Act were set forth by the Commission in *In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License*, Casino Control Commission No. 79-CL-1, (February 26, 1979), where it said at 15:

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

The Appellate Division of Superior Court has held that "inimical," with regards to the casino industry, means "adverse to the policy of the Act and gaming operation." *In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54*, (N.J. App. Div. July 11, 1985, A-993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17).

The undisputed facts of the instant matter demonstrates that while employed as a coin booth cashier at the Showboat Hotel Casino on July 30, 1988, respondent knowingly and with intent, did commit the offense of Theft by Unlawful Taking contrary to N.J.S.A. 2C:20-3. Notwithstanding that the amount of money involved in the theft gives rise to only a disorderly persons offense (less than $200), pursuant to N.J.S.A. 2C:20-2b(3), the circumstances of the taking indicates that respondent's continued participation in the casino industry would undermine

public confidence in the integrity of gaming operations. Respondent, although young, was aware that his act of theft was illegal and failed to produce any mitigating factors to alleviate the severity of his conduct. The reasons stated by respondent for the commission of the offense does not warrant consideration as mitigating factors but, rather, appear to be aggravating factors instead. The theft of money from his casino employer for the purchase of sneakers for his jailed brother, rather than wait for his legitimate paycheck, is not sufficient reason to absolve or exculpate respondent's behavior. Respondent knowingly committed the act of theft of his employer's property during the course of his employment. Such an act, clearly, may not be condoned.

I **CONCLUDE** the Division has clearly established, by a preponderance of the credible evidence, that respondent's conduct is inimical to the Act as a consequence of his violation of N.J.S.A. 2C:20-3 and the circumstances surrounding that event.

Section 89b(2)

The Division alleges that respondent lacks the requisite good character, honesty and integrity to possess a casino employee license. N.J.S.A. 89b(2) provides, in pertinent part, that:

> Each applicant for a casino ... employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. ...

In accordance with section 89b(2), the burden of proof lies with respondent by the standard of clear and convincing evidence. This standard of proof was articulated by the Commission in its decision in *In the Matter of the Application of Resorts International Hotel for a Casino License*, Casino Control Commission (February 26, 1979) at pp. 5-6 where it said:

> ...The clear and convincing evidence requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt, clear and convincing evidence should produce in the mind of the (fact finder) a firm belief or conviction as to the truth of the matters sought to be established....

In *Resorts*, supra., at 8, the Commission held that an unfavorable reputation, which raises questions which must be addressed by the applicant, is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The Commission continued to say:

> ...A sullied reputation may well be indicative of poor character. In that respect, reputation is quite relevant. However, reputation and actual character are not the same.

In the instant matter, respondent has engaged in a course of conduct which runs counter to the accepted standards of honesty, integrity and good character. He has failed to establish his good reputation through the production of witnesses who know him and/or know of him. Respondent's only proof is his assertion that his conviction of the section 2C:20-3 offense is his first and only criminal offense. That is not sufficient to satisfy his obligation and standard of proof.

I, therefore **CONCLUDE** that respondent has failed to demonstrate, by the standard of proof of clear and convincing evidence, that he possesses the degree of good character, honesty and integrity required to maintain his license as a casino employee.

ORDER

For all of the reasons advanced hereinbefore, it is accordingly **ORDERED** that the casino employee license and the casino hotel employee registration of Roger D. Ford be and are hereby **REVOKED** and that the Division's complaint is hereby **AFFIRMED.**

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

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

3 April 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

4/6/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 6 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Roger D. Ford

For the Respondent:

Roger D. Ford

EXHIBIT LIST

For the Petitioner:

P-1 Criminal Complaint

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-39
LICENSE NO. 03241-21
OAL DOCKET NO. CCC 2469-88
ORDER NO. 89-9-10

STATE OF NEW JERSEY, DEPARTMENT	:	
OF LAW & PUBLIC SAFETY, DIVISION	:	
OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
STEPHEN M. GASPARI,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the administrative law judge (ALJ) having found that the respondent was convicted of the offense of possession of gambling records (third degree) in violation of N.J.S.A. 2C:37-3(a), which is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1); and the ALJ having determined that the respondent failed to establish his rehabilitation and the good character, honesty and integrity required for licensure; and the ALJ having filed an initial decision with the Casino Control Commission recommending revocation of respondent's casino employee license; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 16th day of May 1989, ORDERED that the initial decision is modified for the purpose of amplifying the discussion of the rehabilitation factors contained in N.J.S.A. 5:12-90(h), viz.: (1) the respondent's position as a floorperson raises concern for the integrity of gaming operations; (2) because the respondent's unlawful gambling offense is related to bookmaking, it is a most serious disqualifying offense; (3) the seriousness of this offense is aggravated because it was committed under circumstances which involved the respondent's contact with a casino patron during the course of his employment as a floorperson; (4) the date of the offense, June 1986, is relatively recent; (5) the respondent was of mature age, 30 years, when the offense was committed; (6) this was not an isolated incident in that the gambling records found by the police were for a two-week period. Moreover, the respondent's testimony regarding his involvement in illegal gambling was less than candid. The fact that the police were able to obtain a search warrant for the respondent's residence indicates that they had probable cause to believe evidence of criminality would be found therein. Yet, the respondent testified that his house was searched by mistake and that he visited the house of a reputed gambler on only one occasion. Under the circumstances, his testimony strains credibility and is

unworthy of belief; and (7) there are no compelling mitigating factors sufficient to overcome the respondent's disqualification. The evidence of the respondent's rehabilitation included: (a) one favorable character reference; (b) successful completion of probation; and (c) recent pursuit of a law-abiding lifestyle as evidenced by his self-employment as a house painter following the suspension of his casino employee license and his having had no further contact with the unsavory persons with whom he had been involved in his unlawful gambling activity. Although not insubstantial, this evidence is insufficient to overcome his disqualification.

IT IS FURTHER ORDERED that, subject to this modification, the initial decision is adopted and the casino employee license of Stephen M. Gaspari is hereby revoked; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /SMI
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2469-88
AGENCY DKT. NO. 87-39

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
STEPHEN M. GASPARI,
Respondent.

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

Stephen M. Gaspari, respondent, pro se

Record Closed: December 23, 1988 Decided: January 9, 1989

BEFORE **BEATRICE TYLUTKI**, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 18, 1986, seeking the revocation of the casino employee license of the respondent, Stephen M. Gaspari, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

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The Commission ordered the temporary suspension of the respondent's casino employee license on August 25, 1986. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on April 8, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held by way of a telephone conference call on June 28, 1988. At that time the parties agreed that the issues in this matter are:

1. Whether the respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1).

2. Whether the respondent's continued licensure is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

3. Whether the respondent engaged in criminal activities for economic gain in violation of the criminal and civil public policy of New Jersey, and which would render his continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86e.

4. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

5. Whether the respondent can demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing was initially scheduled for September 1, 1988, and was adjourned at the request of the Deputy Attorney General then assigned to the case, David Arrajj. The matter was rescheduled for September 19, 1988, and was again rescheduled since the respondent was confused as to the hearing location. The matter was rescheduled and heard on December 2, 1988, at the Audubon Municipal Building in Audubon, New Jersey.

During the hearing, the respondent requested additional time to submit statements from character witnesses. I agreed to keep the record open until December 23, 1988, for the receipt of such letters and for comments thereon by Deputy Attorney General Ralph L. Fusco. One letter was submitted by the respondent within this time and the record closed on December 23, 1988.

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FACTUAL FINDINGS

I **FIND** that the facts in this matter are not in dispute.

In June 1986, there was a search of the respondent's residence pursuant to a search warrant and he was arrested while at work at Bally's Park Place Hotel and Casino (Park Place). Mr. Gaspari was indicted and charged with one count of the possession of gambling records representing more than five bets totalling more than $1,000.00, contrary to the provisions of N.J.S.A. 2C:37-3a; one count of the possession of a prohibited weapon, a sawed-off shotgun, contrary to the provisions of N.J.S.A. 2C:39-3b; and one count of the possession of a rifle without the requisite identification card, contrary to the provisions of N.J.S.A. 2C:39-5c1 (P-1). On April 9, 1987, the respondent pled guilty to the possession of gambling records and to the possession of a prohibited weapon and the other charge was dismissed (P-2). Mr. Gaspari was placed on probation for one year, fined a total of $300.00 and was required to pay $60.00 to the VCCB (P-2). Prior to the hearing in this matter, the respondent had completed his one year probationary period and has paid all fines and the VCCB payment.

According to Mr. Gaspari, his residence was searched by mistake. The respondent stated that his former friend, Charles Sposaro, was employed in 1986 as a craps dealer at the Sands Hotel and Casino and was involved in illegal sport betting. According to the respondent, Mr. Sposaro was involved in a dispute about a wager and the person who placed the bet went to the police. The police initiated an investigation into Mr. Sposaro's gambling activities and during this investigation the police observed on one occasion that the respondent visited Mr. Sposaro. Since the police suspected that the respondent was involved in Mr. Sposaro's gambling activities, they searched his residence. The respondent denied that he was involved in Mr. Sposaro's illegal gambling activities.

When the police searched the respondent's residence, they found gambling records which the respondent stated represented his own sport bets and some bets for friends, which he had placed with a person he met while working at Park Place. This person was a patron of the casino who, during informal conversations, mentioned his personal sport bets and then indicated a willingness to handle the respondent's sport bets. Mr. Gaspari stated that he has not seen or talked to this person since his 1986 arrest. According to the respondent, he has not done any illegal gambling since his arrest and conviction.

As to the sawed-off shotgun, the respondent stated that he sawed the weapon in half sometime ago after he saw a person do this in a movie. The shotgun was disassembled and was in a tool box in his attic; Mr. Gaspari stated that the shotgun had been in this box for more than ten years and that parts of the weapon were missing. He doubted whether it would be usable if reassembled. As to the rifle, the respondent stated that he bought it while in military service and that he was not aware that it was illegal to have such a rifle in his possession without an identification card.

The respondent worked in a casino in Las Vegas for three months, and then in 1979, he started to work for Park Place as a dealer. While the respondent worked for Park Place, he held several types of positions, the last position being floorperson.

After the respondent's casino employee license was suspended and he lost his position with Park Place, Mr. Gaspari sold his home in Ventnor and moved to Blackwood, where he currently resides. Mr. Gaspari was married just prior to his arrest and he and his wife now have a nine-month-old child. Presently, the respondent is self-employed as a painter and currently he has no intention to either move back to the Atlantic City area or to seek a casino position if his license is restored. However, Mr. Gaspari would like to retain his license since it gives him the option to some day get either a full-time or part-time position within the casino industry. Mr. Gaspari also indicated that he is considering the possibility of seeking employment as a gambling instructor.

On behalf of the respondent, Gabe Staino, President of the New Atlantic Auto dealership, wrote that he has known the respondent for twelve years and considers him to be a person of good character (R-1).

CONCLUSIONS OF LAW

Deputy Attorney General Ralph L. Fusco, on behalf of the Division, argued that the Division has established a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1). Based on the facts presented, I agree with Mr. Fusco. Mr. Gaspari pled guilty to the charge of the possession of gambling records, a violation of N.J.S.A. 2C:37-3a, which is a violation of the third degree since more than five bets and more than $1,000.00 was involved, and I **CONCLUDE** that this constitutes a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1).

Based on the respondent's testimony and absent any proof to the contrary by the Division, I **CONCLUDE** that the respondent's conviction for the possession of a prohibited weapon pursuant to N.J.S.A. 2C:39-3b is not a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1) nor is the possession of the weapons inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

Also, Mr. Fusco argued that the respondent has not shown by clear and convincing evidence that he has been rehabilitated pursuant to the standards set forth in N.J.S.A. 5:12-90h. Again, I agree with Mr. Fusco. Although Mr. Gaspari has shown that he has undergone a life-style change since his arrest and conviction by disassociating with Mr. Sposaro and the person who used to place his illegal gambling bets, by moving out of the Atlantic City area, and by starting a family, I **CONCLUDE** that not enough time has passed since his release from probation to show his rehabilitation pursuant to the standards set forth in N.J.S.A. 5:12-90h.

Lastly, based on the same facts, I **CONCLUDE** that Mr. Gaspari cannot now show by clear and convincing evidence, his good character, honesty and integrity, which is required for continued licensure pursuant to N.J.S.A. 5:12-89b(2).

Therefore, I **ORDER** that the respondent's license as a casino employee be **REVOKED.**

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

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

January 9, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

1-10-89
DATE

Clerk initials
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 12, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Indictment filed against Stephen M. Gaspari, no. 86-08-1566-B-I

P-2 Judgment of Conviction entered against Stephen M. Gaspari on May 1, 1987

For the Respondent:

R-1 Letter from Gabe Staino to Judge Tylutki, dated December 9, 1988

WITNESSES:

For the Petitioner:

Stephen M. Gaspari

For the Respondent:

Stephen M. Gaspari

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-330
REGISTRATION NO. 61768-40
OAL DOCKET NO. CCC 3744-88
ORDER NO. 89-9-9

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. ERIC L. GELMAN, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 10th day of March 1989, ORDERED that the initial decision is modified to specify that the respondent's conviction for tampering with or fabricating physical evidence in violation of N.J.S.A. 2C:28-6(1) constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1);

IT IS FURTHER ORDERED that the casino hotel employee registration held by Eric L. Gelman is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3744-88
AGENCY DKT. NO. 88-330

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ERIC L. GELMAN,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Eric L. Gelman, respondent, pro se

Record Closed: October 11, 1988 Decided: December 7, 1988

BEFORE **RICHARD MURPHY,** ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on April 28, 1988 seeking to revoke respondent Eric L. Gelman's casino hotel employee registration because of his guilty plea in August of 1987 to charges of tampering with or fabricating physical evidence and distribution of a controlled dangerous substance (marijuana). The issues are (1) whether respondent was convicted of a crime listed as a statutory disqualifier under N.J.S.A. 5:12-86c; (2) whether respondent has been convicted of an inimical offense which disqualifies him from registration pursuant to N.J.S.A. 5:12-86c2; and (3) whether respondent may demonstrate by clear and convincing proof his rehabilitation pursuant to section 91d of the Casino Control Act. Gelman concedes his disqualification and argues rehabilitation. This opinion recommends for revocation.

PROCEDURAL HISTORY

Respondent requested a hearing on the complaint on May 12, 1988 and the matter was transmitted to the Office of Administrative Law for hearing as a contested case on May 20, where it was preheard on August 8 and heard to completion on October 11, at which time the record closed. The two date for submission of the initial decision was extended from November 28 until December 21 because of a backlog of decisions.

FINDINGS OF FACT

The following facts are undisputed. Respondent was indicted in Camden County on May 19, 1986 for distribution of a controlled dangerous substance (marijuana) after he sold the drug to an investigator from the prosecutor's office. On July 31, 1987, respondent was again indicted for distribution of a controlled dangerous substance, possession of a controlled dangerous substance, tampering with and fabricated physical evidence, hindering apprehension or prosecution, and tampering with witnesses for enforcement. He entered a plea of guilty to the two distribution counts, as well as the tampering count on August 25, 1987. (P-1 and P-2). The Division filed its complaint on April 28 of 1988 on the basis of these two convictions.

On June 23, 1987, respondent was indicted for possession of a lost or stolen credit card and pled guilty on August 3, 1987. Although the Division did not cite this conviction in its complaint, it offered it as relevant to the issue of rehabilitation. With respect to the distribution of CDS and tampering convictions, the sentencing judge offered the following statement of reasons, which I include in full as it provides a comprehensive overview of the circumstances of the second offense:

> This defendant stands convicted of two counts of distribution of marijuana and one count of tampering with physical evidence. This is his second indictable conviction. He is 20 years of age.
>
> With respect to indictment 1331-5-86 the defendant was arrested as part of a highly publicized undercover investigation of drug trafficking in the Cherry Hill East High School. Actually, althouigh this defendant's name surfaced during that investigation he actually sold a small quantity of marijuana to the undercover investigator at a local pizzeria. Although the defendant initially claimed he was entrapped into making that sale I believe that the presentence report and the statements of witnesses shows that that claim is

totally false. In addition, the subsequent indictment shows that this defendant was predisposed towards distributing controlled dangerous substances. He transferred marijuana to a girl at a party and also the statement of some of the witnesses in indictment 1420-7-87 make it very clear that this defendant took pills home from the drug store in which he worked and freely transferred them to others as well as perhaps other substances.

With respect to the indictment 1420-7-87 the underlying circumstances of the offense are most tragic. Evidently, the defendant went to a party in which drugs were heavily engaged in. He then left the party with a few friends and went to his home. Later that evening the host of the other party came to his home and was obviously heavily overdosed. He claimed that he did not need hospitalization and he was sent downstairs to the family room to "sleep it off". If the defendant and those who were at his home were not so heavily using drugs themselves that night it is unclear as to whether they would have ignored the victim's feeling that he did not need medical assistance and required him to get it or taken him to the hospital themselves. Unfortunately, they did not act on their own and the victim overnight died of an overdose. Then, rather than getting immediate attention for the victim the defendant selfishly began to think of his own interests. He cleaned the victim up, threw all existing drugs down the toilet and then called the police. Although it is doubtful that had the defendant thought of the victim rather than himself the victim would have survived one will actually never know.

The defendant showed no remorse for what took place on the date in question and in his statement which is part of the presentence report merely stated that he wished that the victim never came to his home because he is satisfied that he would have died at his home also.

Notwithstanding all that was going on at this time in the defendant's life, within one month after that episode, namely the death in his home by way of overdose of a friend, the defendant was arrested on a charge of credit card fraud in Atlantic County, which was an indictable conviction for which he was ultimately convicted.

Under all those circumstances, and particularly considering the attitude of the defendant the court felt that the risk that he would commit another offense was a very realistic one and weighed that aggravating factor most heavily.

In addition, the court found that the need to deter was an aggravating factor.

The court also found that the defendant's own substance abuse problems were a substantial ground tending to excuse or justify his conduct although they failed to establish a defense and also found that he will participate in a program of community service.

However, with the attitude displayed by the defendant the court was particularly satisfied that he is not likely to respond affirmatively to probationary sentence unless some period of incarceration was imposed as a condition of probation.

The court did not give the defendant the benefit of mitigating factors one and two in that substance abuse and distributing controlled dangerous substances always has the possibility of causing or threatening serious harm and the defendant must have contemplated this. This was tragically borne out of the circumstances of this case.

The court did not find the defendant's prior record to be can aggravating factor or a mitigating factor in light of the fact that offense was relatively minor and was committed at or about the same time as these offenses.

The court expressed at the time of sentencing the fact that a number of parents in Cherry Hill publicly criticized the Camden County Prosecutor for engaging in this undercover investigation. The court expressed its astonishment at that type of attitude. The court felt and wanted the parents of this defendant to know since they were present at sentencing that in its opinion, rather than criticize the prosecutor for his actions the Cherry Hill community should take note of the fact that as far as this court is concerned its children are no different than children in Camden and that all persons before this court should be treated the same. Those who are more fortunate economically are not entitled to more favored treatment due to their economic status alone. In fact, their criminal activity is less understandable to the court than the criminal activity of those who are not as well off economically.

The court felt it was important to note those facts at sentencing to let the defendant and his parents know that the court was not impressed with the argument of entrapment. It was rather obvious to this court from the statements set forth in the presentence report that this defendant was predisposed to distributing controlled dangerous substance and he was not merely picked on by this undercover investigator. Rather, it is much more reasonable to infer that this defendant's name surfaced during the course of the investigation and he was initially reluctant to distribute to one he did not know.

Particularly in light of the attitude of this defendant and his family with respect to their minimizing his criminal behavior, the court felt that the period of incarceration authorized under the plea agreement was necessary in order to deter this defendant and others in his community from violation the law in this fashion. The court felt that it was particularly important to advise the defendant of its feelings with respect to this offense so that the defendant would understand the court when it also warned the defendant at the time of sentencing that a violation of probation will be treated most seriously.

As a result, the defendant was sentenced up to the maximum authorized by the plea agreement which was the imposition

> of three concurrent five year terms of probation subject to the condition that the defendant serve 364 days in the Camden County Jail and subject to the further condition that upon his release he perform community service and obtain a drug evaluation and treatment.
>
> For consideration of aggravating and mitigating factors see attached. (P-5)

Respondent Eric Gelman does not dispute that the above-described convictions are disqualifying within the meaning of N.J.A.C. 5:12-86c but maintains that he has been rehabilitated and offers letters of recommendation in addition to his testimony. The Division also offered evidence, which was not disputed, that respondent had in his possession, when arrested for the credit card offense, a driver's license with his photograph and the name of another person, as well as a falsified college identification card (P-10). There is no dispute as to the above facts and I so **FIND**.

Respondent does not dispute that he was convicted of the above offenses and concedes that he is disqualified within the meaning of N.J.S.A. 5:12-86(c). He also acknowledges that he committed some wrongs in his early adulthood but urges that he has been rehabilitated. With respect to the offenses, he claims that he was pressured into selling drugs to an undercover officer in 1985, and only after a month of recruitment sold less than an ounce of marijuana to the officer without any financial gain. As to the second drug offense, and the tampering conviction he claims that he merely shared a marijuana cigarette with his girlfriend in his home after a party and that a friend let himself in downstairs, went to sleep and died of a drug overdose, through no fault of the respondent's. He acknowledges that he cleaned up the corpse, threw the existing drugs away (including pills that he had stolen from his father's pharmacy) and later called the police. He states that he was in shock when he found the body. He attributes the credit card offense to a state of deep emotional depression and financial ruin after his conviction and states that he had no idea what he was doing at that time. He states that he obtained the false identifications when he was 19 to be able to get into the Jersey shore bars.

Gelman states and the Division does not dispute, that he served a few months in the Camden County Jail on good behavior and obtained early release, whereupon he moved to Margate and obtained employment at the Tropicana Hotel. He states that he was engaged in community service at the Bacharach Hospital at this time, and attended a ten-week program of drug rehabilitation at Reality House. He left the Tropicana to go to a better job at the Show Boat, and

states that he has had no disciplinary problems on that job. He states that he also suffers from a learning disability (dyslexia), but acknowledges that he was able to graduate from high school and has attended community college, and also has accumulated some monies from playing the stock and future's market. He offered a report from Dr. Sidney D. Segal, Clinical Psychologist, who stated that he has been seeing the respondent because of an anxiety disorder and stress connected to his arrest and trial. Dr. Segal further stated that Mr. Gelman has a history of learning disability, with perceptual impairment that he is not a drug dealer and does not suffer from a substance abuse disorder (R-11). He also offers confirming letters and references from Reality House, Bacharach Hospital, his rabbi, and a number of other persons who have known him either as a personal friend or acquaintance. (R-1 to R-10).

DISCUSSION AND CONCLUSIONS

Respondent does not dispute that as a matter or law that his convictions for distribution of controlled dangerous substances and tampering with or fabricating physical evidence, pursuant to N.J.S.A. 24:21-19(a)(1) and N.J.S.A. 2C:28-6.1 constitute disqualifying offenses under N.J.S.A. 5:12-86(c) and I **CONCLUDE** that he is disqualified from registration on that basis.

The remaining issue is whether the respondent has shown rehabilitation within the meaning of N.J.S.A. 5:12-91(d). That section provides that a registrant who has committed a disqualifying offense will not be denied registration if he or she can affirmatively demonstrate rehabilitation. In determining whether such rehabilitation has been shown, the Commission is to consider the following factors:

(1) The nature and duties of the registrant's position;
(2) The nature and seriousness of the offense or conduct;
(3) The circumstances under which the offense or conduct occurred;
(4) The date of the offense or conduct;
(5) The age of the registrant when the offense or conduct was committed;
(6) Whether the offense or conduct was an isolated or repeated incident;
(7) Any social conditions which may have contributed to the offense or conduct;
(8) Any evidence of rehabilitation, including good conduct in prison or in the community, 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 registrant under their supervision.

In applying the above factors to this case, the nature and duties of the registrant's position are not significant because he occupied a low level position without any responsibility for management of employees or money. (Factor 1). The offenses of which he was convicted are highly serious ones involving both distribution of controlled dangerous substances and tampering with evidence. (Factor 3). The circumstances under which the offenses or conduct occurred in April of 1987 reflect an extreme disregard for law and contain little or nothing in the way of mitigating circumstances. (Factors 3 and 4). The respondent, who was 19 at the time of the offenses, was indicted for two separate drug offenses occurring over two years and his offense or conduct was thus repeated and cannot be described as an isolated incident. (Factors 5 and 6). He cites no social conditions contributing to the offense, other than some perceptual impairment, which did not seem to prevent him from completing school and engaging in other activities. (Factor 7). As to rehabilitation, the respondent has shown good conduct in prison and in the community, including completion of a drug treatment program as well as compliance with the terms of probation. He offers numerous character references from family and friends. He discounts the credit card conviction as solely a product of emotional stress and financial woe following his convictions for distribution and tampering, and argues that it has no bearing on his rehabilitation.

Given the highly serious nature of the multiple offenses here, as well as the disturbing circumstances under which they were committed as well as the absence of any mitigating circumstances, I **CONCLUDE** that the respondent has failed to show the requisite rehabilitation under N.J.S.A. 5:12-91. Although he may have learned his lesson at this point and has demonstrated progress in rehabilitating himself, the rehabilitation shown is insufficient to overcome the serious and repeated nature of the offenses on which disqualification is based.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the casino hotel employee registration of Eric Gelman is **REVOKED**.

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

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

Dec. 8, 1988
DATE

RICHARD MURPHY, ALJ

Agency Receipt:

12-8-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 12 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

WITNESSES

For the Division:

Eric Gelman

For the respondent:

Eric Gelman

EXHIBITS

For petitioner:

P-1 Camden County Indictment No. 1420-07-87

P-2 Judgment of Conviction

P-3 Indictment No. I-1331-05-86

P-4 Judgment of Conviction

P-5 Statement of Reasons for Sentence by Judge Isaiah Steinberg, J.S.C.

P-6 Offense Report, Cherry Hill Police Department

P-7 Offense Report, Cherry Hill Police Department

P-8 Atlantic County Indictment 87-06-1157D

P-9 Judgment of Conviction

P-10 Egg Harbor Township Arrest Report

For respondent:

R-1 Letter from respondent's parents

R-2 Letter from Reality House, Inc.

R-3 Letter from Betty Bacharach Rehabilitation Hospital, Volunteer Coordinator

R-4 Letter from Rabbi Jerome P. David

R-5 Letter from Hillel Leiberman

R-6 Letter from Nathan and Marcie Stone

R-7 Letter from Jerome J. Platt, Ph.D.

R-8 Letter from Marvin S. Factor

R-9 Letter from Wendel M. Watties

R-10 Letter fromJosh Gelman

R-11 Letter from Dr. Sidney D. Segal, Ed.D.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-5
APPLICATION NO. 68832-21
OAL DOCKET NO. CCC 4052-88
ORDER NO. 89-2-13

APPLICATION OF JUDITH GIBBONS

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989; and a motion to reject the initial decision and deny the application having failed to achieve a majority vote; and no other motion having been made,

IT IS on this 2nd day of February 1989, ORDERED that the initial decision is deemed adopted pursuant to N.J.S.A. 52:14B-10(c); and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly ind
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4052-88

AGENCY DKT. NO. 88-EA-5

JUDITH GIBBONS,

Petitioner,

v.

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

Respondent.

Judith Gibbons, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 21, 1988 Decided: November 29, 1988

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of petitioner's application to be licensed as a casino employee pursuant to N.J.S.A. 5:12-1 et seq. Respondent filed a letter of objection with the Casino Control Commission, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on October 14, 1988, and the record closed on October 21, 1988, after the receipt of additional information not available at the hearing.

The questions presented are whether petitioner can establish by clear and convincing evidence that she possesses financial stability and integrity, and is a person of good character, N.J.S.A. 5:12-89b(2), N.J.S.A. 5:12-90b; and that should respondent

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establish certain disqualifying conduct - theft by deception, in the third degree -, N.J.S.A. 5:12-86g, N.J.S.A. 5:12-86c, whether petitioner can demonstrate rehabilitation. N.J.S.A. 5:12-90h.

The facts are undisputed. In June 1980, petitioner obtained a car loan in the amount of $8,495, and in January 1983, that car was repossessed and sold leaving a loan balance of $3,813. The amount was not paid back and the lender has written off the loss.

In November 1985, the New Jersey Division of Unemployment and Disability Insurance filed a certificate of debt with the Superior Court in the amount of $945 representing unemployment overpayments and a fine. This resulted from the improper collection of benefits from January 31, 1982 through April 12, 1982, during a period of employment. To this point no payments have been made upon this debt.

In July 1986, petitioner obtained a student loan through the New Jersey Higher Education Assistance Authority in the amount of $2,600. This loan is in default, but was reduced by the seizure of a tax refund in the amount of $1,744 in March 1988. Petitioner made two $25 payments in August and September 1988, and presently, $1,192 is due.

Petitioner testified that she is 30 years old, unmarried and resides with her brother in Pleasantville. She was raised in Newark and East Orange, New Jersey, and attended Fairleigh Dickinson College from 1975 through 1979. She was unable to complete her education; however, because she had to go to work. Petitioner was raised by her grandmother and she has four siblings.

Petitioner acknowledged that she was receiving unemployment benefits in 1982 while working. She testified that she was having financial problems at the time and that she was helping to support her grandmother and brother. This is what also caused her to default on her car loan. She borrowed money in 1986 from the Higher Education Assistance Authority in order to go to beautician school in Newark. This did not work out. Petitioner testified that she intends to pay these loans off, but does not now have the money to do so; she continues to support her brother. Petitioner is presently licensed as a registrant and works in the word processing department at Ballys. She has been there for two years. This is the substance of the record.

Respondent has established conduct, which if prosecuted, would have amounted to theft by deception in the third degree, a statutory disqualifier. In addition, petitioner has a number of debts which are unsatisfied. Nevertheless, petitioner has established rehabilitation, and that she is a person of financial stability and good character. At the time that she defaulted on her car loan and improperly collected unemployment benefits, petitioner was approximately 23 years old. She was helping to support her grandmother and younger brother. No subsequent criminal behavior has been reported. The loan from the Higher Education Assistance Authority was obtained in July 1986, and has been repaid in part through the seizure of a tax refund and two small voluntary payments by petitioner in the period immediately prior to hearing. There is no indication that petitioner has had any difficulty in the course of her employment as a registrant or anywhere else. She was a credible individual and appeared to be making an honest effort to pay her debts and pursue her career.

Based on the foregoing, it is my conclusion that petitioner has established by clear and convincing evidence that she is a person of financial stability and good character, and despite disqualifying conduct in 1982, she has since been rehabilitated. It is **ORDERED** that petitioner's application for a casino employee license be **GRANTED.**

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

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

11/29/88
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

12/1/88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 2 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Judith Gibbons

EXHIBIT LIST

R-1	Certificate of debt from New Jersey Division of Unemployment and Disability Insurance
R-2	Unemployment or Disability Benefits and Imposition of Penalty from New Jersey Division of Unemployment and Disability Insurance
R-3a	Schedule of Overpayments
R-3b	Claimant Ledger
R-4	Student loan paper
R-5	Document, to G.E. Rogers, from First Fidelity Bank
R-6	Personal History Disclosure Form - 2A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-95
OAL DOCKET NO. CCC 4448-88
LICENSE NO. 64661-21
ORDER NO. 89-11-12

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. TROY GIBSON, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 22nd day of March 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license held by Troy Gibson is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4448-88
AGENCY DKT. NO. 88-95

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
TROY L. GIBSON,
Respondent.

Norma Stancil, Deputy Attorney General for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)
Gregory Imperiale, Esq., for respondent

Record Closed: December 22, 1988 Decided: February 3, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (CCC) on October 8, 1987, seeking revocation of the respondent's casino employee gaming license. It also sought and obtained an Order suspending respondent's casino employee license. The complaint alleged that the respondent was charged with possession of a controlled dangerous substance (marijuana) contrary to the law in a casino dealer's locker room. The complaint also

alleges that respondent was observed smoking a marijuana cigarette in the locker room.

The Division further alleges that these facts, if proven, render the respondent's continued licensure inimical to the policy of the Casino Control Act. N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g. The alleged acts also raise questions concerning the respondent's good character, honesty and integrity. These traits are required of casino employee licensees by N.J.S.A. 5:12-89b(2) and 90b.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted on July 25, 1988 at which the respondent indicted he was qualified for licensure as a result of his rehabilitation as permitted by N.J.S.A. 5:12-90h.

A plenary hearing convened on October 14, 1988 at which time stipulations were made on the record and the matter was adjourned for the purpose of perfecting the respondent's claim that he was rehabilitated. Certain evidence, he alleged, had not been obtained by the hearing date. Accordingly, the matter was continued until December 22, 1988 at which time the evidentiary phase concluded.

STIPULATIONS OF FACT

On October 14, 1988, the respondent stipulated into evidence police reports P-1, P-2, P-3 and P-4, and a New Jersey State Police Forensic laboratory report, P-5.

These exhibits reveal that on July 31, 1987, respondent was smoking marijuana in the dealer's locker room at the Tropicana Casino/Hotel where he was employed as a blackjack dealer. A consensual search revealed additional marijuana in respondent's locker. The marijuana totaled approximately one gram.

INIMICALITY AND GOOD CHARACTER

A person convicted of a so called statutory disqualifier listed in N.J.S.A. 5:12-86c(1) may avoid loss of licensure by affirmatively showing that he is rehabilitated pursuant to the criteria contained in N.J.S.A. 5:12-90h. The benefit of rehabilitation was extended to persons where offenders were alleged to be inimical to the Casino Control Act and is "subsumed in the inimical analysis." *Davis v. Division of Gaming Enforcement*, 8 N.J.A.R. 301 (1986) 314.

Licensed casino employees are required to possess good character, honesty and integrity by N.J.S.A. 5:12-89b(2) and 90b. The statute requires that they must establish this by clear and convincing evidence.

As evidence of rehabilitation and good character, the respondent offered a letter from a Slot Shift Manager at Bally's who said that respondent was formerly employed there and was described by "immediate supervisors as dependable and honest"

The respondent also testified that he is 22 years old, worked in the casino industry for approximately one year prior to this incident and has been underemployed since that time. He spent one week as a waiter but did not make much money. He spent 2 months at a car parts warehouse unloading trucks but left because the work was too hard. He is not currently seeking employment. He has not applied for a casino employee registration. He started classes at Associated Business Schools in Atlantic City on two occasions but dropped out because the school was slow in forwarding him checks to "pay bills". He received two loans from the school for tuition and living expenses and owes the school $900. His reason for leaving school is that the personal loan money he was to live on was slow in coming in. He had to leave because he could not pay his bills without the loan proceeds. But he has only been employed for 2 months since his suspension in 1987.

It appears he is supported by his girlfriend with whom he resides. The respondent said he was no longer using marijuana, was sorry for what he did and realizes he made a big mistake. He said he never heard of anyone losing a license for using drugs.

DISCUSSION AND CONCLUSIONS

The testimony of the respondent was insufficient to establish his good character, honesty and integrity by clear and convincing evidence. He is not only unemployed but he is not truly seeking employment. He appears to have enrolled in school solely for the benefit of loans made available to students for living expenses. When these were slow in coming, he dropped out. He did this on two occasions.

No where is it written that employment is a sine qua non of good character, honesty and integrity. But an unemployed person who aspires to possess good character, ought to pass his time in some productive or socially acceptable way. This respondent offered no such testimony or evidence.

I **FIND** and **CONCLUDE**, therefore, that respondent has failed to carry his burden, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for continued licensure in the casino industry. N.J.S.A. 5:12-89b(2) and 90b.

As stated in *Davis*, supra. at 313, the accepted analytical approach to inimicality was first set forth in *In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License,* Dkt. No. 79-CL-1 (Commission decision, February 26, 1979), at 15 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 gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of

> gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The facts in this matter clearly demonstrates that respondent had in his possession a quantity of marijuana, an illegal controlled dangerous substance (CDS), while employed by the Tropicana Casino/Hotel. The facts also demonstrate that respondent used the CDS while on the premises of the Tropicana. Respondent knew that the possession of marijuana constituted an illegal act. He also knew that the use of the illegal substance on the premises of the casino was forbidden. Such conduct by respondent is inimical to the Act where it "...would justifiably undermine public confidence in the integrity of the regulatory process and gaming operations..." *Resorts*, at 313.

I **FIND** and **CONCLUDE**, therefore, that respondent's conduct was inimical to the Act, and further, he was unable to affirmatively demonstrate any circumstances which would mitigate the conduct.

ORDER

Accordingly, it is **ORDERED** that the casino employee license, issued to Troy L. Gibson, be and is hereby **REVOKED** and that the Division's charges against respondent are **SUSTAINED**.

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

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

February 3, 1989
DATE

Edgar R. Holmes /ded
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 9 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Troy L. Gibson

For the Respondent:

Troy L. Gibson

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

R-1 Letter of Recommendation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-M-2; 88-M-3
OAL DOCKET NO. CCC 4801-88
ORDER NO. 89-18-14

IN THE MATTER OF THE PETITION OF :
JOHN J. GILL & JOHN S. HERWICK, :
Petitioners, :
v. : ORDER
STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Respondent. :

This matter having come before the Casino Control Commission (Commission) for consideration at its open public meeting of May 3, 1989, and the Commission having considered the initial decision of, Steven L. Carnes, Administrative Law Judge (ALJ), the exceptions thereto filed by the Division of Gaming Enforcement (Division), and having heard oral argument, and good cause having been shown,

IT IS on this 16th day of May 1989 hereby

ORDERED that the initial decision is modified as follows:

1. The ALJ's comments regarding the professionalism and competence of the Division investigator who testified herein are rejected as unnecessary and injudicious;

2. The ALJ's reliance on matters outside the record of this case in his assessment of the credibility of George Miller is rejected as improper. We nevertheless agree that the proffered statements of George Miller were not sufficient to support a finding that Messrs. Gill and Herwick were not qualified or disqualified under the Casino Control Act. N.J.S.A. 5:12-107(a) (b).

IT IS ORDERED that, subject to these modifications, the initial decision is adopted and petitioners Herwick and Gill have thus established their qualifications pursuant to N.J.S.A. 5:12-92 and N.J.A.C. 10:43-1.1 et. seq.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By: Dennis Daly
Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4801-88

AGENCY DKT. NOS. 88-M-2 and 88-M-3

JOHN J. GILL and
JOHN S. HERWICK,
Petitioners,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

John J. Gill, petitioner, pro se

John S. Herwick, petitioner, pro se

Frederick J. McDonough, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: February 3, 1989 Decided: March 17, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioners, John J. Gill and John S. Herwick, are former qualifiers for

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the Baumgardner Construction Co. Inc., which applied to the Casino Control Commission (Commission) for the renewal of a casino service industry license, pursuant to N.J.S.A. 5:12-92. The respondent, the Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioners lacked the requisite good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c). Subsequent to the filing of the Division's objection but prior to the Commission's consideration of Baumgardner's application, the petitioners were removed from their employment. On June 1, 1988, the Commission renewed the Baumgardner casino service industry license; however, the Commission determined to afford both petitioners in this case the opportunity to have a hearing to establish their qualifications in the event that they might seek work in the casino industry in the future.

PROCEDURAL HISTORY

Baumgardner Construction Co. Inc. filed with the Commission an application for the renewal of a casino service industry license. By letter to the Commission, dated February 10, 1988, the Division objected to the application of Baumgardner Construction Co. Inc. for licensure as a casino service industry, alleging that two of Baumgardner's employees, Messrs. Gill and Herwick, both of whom must clearly and convincingly establish their individual qualification as a prerequisite to the establishment of Baumgardner's qualifications pursuant to N.J.A.C. 19:41-3.2(a)2 and N.J.A.C. 19:43-1.14, lacked the requisite degree of good character, honesty and integrity for casino service industry licensure pursuant to N.J.S.A. 5:12-86e, N.J.S.A. 5:12-92, and N.J.A.C. 19:43-1.3(c). In its report, the Division sets forth three distinct areas that involve questionable conduct engaged in by Messrs. Gill and Herwick. The three areas are: (1) The systematic provision of free goods and services to persons who were in a position to award contracts or other benefits to Crown-NJ or to Floor Installers, Inc.; (2) The creation of a sham joint venture in order to obtain subcontracts intended to be awarded to minority-controlled businesses; and (3) The procurement of a fraudulent performance bond in connection with an Atlantic City casino hotel project. Subsequent to the filing of the Division's objection but prior to the Commission's consideration of Baumgardner's application, the petitioners were dismissed from their employment. On June 1, 1988, the Commissioner renewed Baumgardner's casino service industry license; however, the Commission determined to afford both petitioners in this case the opportunity to have a hearing to establish their qualification in the event that they might seek work in the casino industry in the future. By letter dated June 1, 1988, and received by the Commission on June 10, 1988, the

petitioner, John J. Gill, requested a hearing. By letters dated February 23, 1988, and March 19, 1988, and received by the Commission on February 26, 1988, and March 2, 1988, respectively, and by verbal request at the Commission meeting on June 1, 1988, the petitioner, John S. Herwick, requested a hearing. On June 27, 1988, the Commission transmitted the matter to the Office of Administrative Law—which received it on June 29, 1988—for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before Administrative Law Judge Lillard E. Law on August 11, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

1. Whether John J. Gill possesses the qualifications for casino service industry licensure?

    a. Whether John J. Gill possesses the requisite good character, honesty and integrity for casino service industry licensure, pursuant to [N.J.A.C.] 19:43-1.3?

    b. Whether the participation of John J. Gill in casino operations would be inimical to the policies of the Casino Control Act (Act) or to legalized gaming in this State, pursuant to Section 86e of the Act?

2. Whether John S. Herwick possesses the qualifications for casino service industry licensure?

    a. Whether John S. Herwick possesses the requisite good character, honesty and integrity for casino service industry licensure, pursuant to [N.J.A.C.] 19:43-1.3?

    b. Whether the participation of John S. Herwick in casino operations would be inimical to the policies of the [Casino Control] Act or to legalized gaming in this State, pursuant to Section 86e of the Act?

The hearing commenced on November 14 and 15, 1988, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. At

the conclusion of the testimony on November 15, 1988, the deputy attorney general requested an adjournment because his witness was unavailable due to surgery. This request was granted and the hearing was scheduled to reconvene on January 20, 1989. On December 8, 1988, the hearing was scheduled to reconvene on February 3, 1989, as the judge was unavailable on January 20, 1989. The hearing concluded on February 3, 1989, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

THE FACTS

A. Corporate History

All of the Division's allegations concern the business dealings of the petitioners. The petitioners were first owners of Floor Installers, Inc., and then employees of Crown Carpet Center of New Jersey, Inc. (Crown-NJ). An analysis of the companies is helpful in understanding the Division's objections.

Floor Installers, Inc., was incorporated in Pennsylvania in 1975. The officers and owners of that firm were John Gill, Patricia Gill (John Gill's wife), John Herwick and Katherine Herwick (John Herwick's wife). Floor Installers maintained its place of business in Pleasantville, New Jersey, and was engaged primarily in the installation of carpet on behalf of retail stores. Floor Installers applied for and received a casino service industry license (#149-70) in 1979. On June 4, 1985, by letter to the Division, Floor Installers indicated its desire to relinquish its license due to its bankruptcy (this subject will be discussed below). On August 14, 1986, the Commission entered an order permitting Floor Installers to withdraw its application for relicensure.

Floor Installers' first direct business with an Atlantic City casino licensee was transacted with Resorts International Hotel, Inc. The firm subsequently did business with the Boardwalk Regency Corp., Greate Bay Hotel and Casino, Inc. ("the Sands"), and Playboy-Elsinore Associates. All of the aforesaid projects involved carpet installation and later carpet maintenance by Floor Installers.

In late 1982, Floor Installers began to experience financial difficulties that were attributed by its owners to thin capitalization, the use of poor accounting methods, and poor accounting advice. As a result of these difficulties, the company filed a Chapter

11 bankruptcy petition on October 25, 1982. The Chapter 11 case was converted to a Chapter 7 (i.e., liquidation) case in January 1984 and, as noted above, Floor Installers subsequently was permitted by the Commission to withdraw its application for relicensure.

In mid-1980, an entity known as Crown Carpet Center, Inc. (Crown-Ohio), of Eastlake, Ohio, received a contract to furnish carpet on a U.S. Housing and Urban Development project in Ventnor, New Jersey, known as Shalom Towers.[1] As Crown-Ohio was unfamiliar with the New Jersey area, it asked John Holzermer, business agent of Carpenters' Union Local 623, for the name of a local firm to serve as a subcontractor on the Shalom Towers job. Holzermer recommended Floor Installers, which ultimately received the subcontract.

In 1982, Floor Installers and Crown-Ohio agreed to form a joint venture to work on a portion of the Epcot Center project in Florida. The companies again utilized the joint venture approach on a Hilton-related project in Orlando, Florida, also in 1982. In addition to the joint venture projects, Crown-Ohio and Floor Installers worked together on an Atlantic City project known as Jeffries Towers, with Floor Installers acting as a subcontractor to Crown-Ohio.

On September 14, 1983, Crown-Ohio formed Crown-NJ, a wholly-owned subsidiary of Crown-Ohio. Directors of Crown-NJ were Herman Frank and Bill Sukenik, both of whom were owners and officers of Crown-Ohio. Officers of Crown-NJ were as follows: Herman Frank, President; Bill Sukenik, Secretary; Elda Rinaldi Gerrard, Assistant Secretary; John Gill, Director of Operations; and John Herwick, Director of Marketing.

On August 20, 1984, Crown-Ohio purchased Floor Installers' assets, goodwill and service contracts for $12,000. The sale was approved by Floor Installers' trustee-in-bankruptcy.

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1 Crown-Ohio was incorporated in Ohio on September 18, 1976, by Herman Frank and Bill Sukenik. It is engaged in the retail sale and installation of carpet.

Herman Frank and Bill Sukenik reside in Ohio; however, Mr. Frank had daily contact with Mr. Gill by telephone, and he would come to New Jersey every two to three weeks to review the company's books, paperwork, procedures and business practices. After the company was established, Mr. Frank's visits to New Jersey became less frequent: they occurred every five to six weeks. Messrs. Frank and Sukenik retained control of the company. Messrs. Gill and Herwick were the company's sales representatives in New Jersey. Originally, Mr. Gill could only sign checks up to $200; anything greater had to be issued from Ohio. After one year, Mr. Gill could sign checks up to $5,000 and sign local payroll checks. Messrs. Gill and Herwick, as salesmen for the company, could negotiate contracts; however, they did not have the authority to sign contracts. Only Mr. Frank or Mr. Sukenik could sign contracts and obligate the company. The petitioners had little authority to make policy in Crown-NJ.

B. Bases Of The Division's Objection

The Division sets forth three distinct areas in which it alleges questionable conduct engaged in by Messrs. Gill and Herwick, either on behalf of Crown-NJ or on behalf of its predecessor, Floor Installers, Inc. The three areas are: (1) The systematic provision of free goods and services to persons who were in a position to award contracts or other benefits to Crown-NJ or to Floor Installers, Inc.; (2) The creation of a sham joint venture in order to obtain subcontracts intended to be awarded to minority-controlled businesses; and (3) The procurement of a fraudulent performance bond in connection with an Atlantic City casino hotel project.

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The Division alleges that the petitioners provided free carpeting and other goods and services to individuals who were responsible: (1) For awarding subcontracts for projects on which the petitioners were bidding or had bid; (2) For authorizing the payment of premium overtime for workers employed by the petitioners; (3) For approving work performed by the petitioners; and (4) For recommending the release of contract funds to the petitioners by project owners or general contractors.

(a) The Greenblatt Incident

In 1984, Crown-NJ obtained a subcontract worth $450,000 on a Philadelphia

project known as Logan Square. The owner of the Logan Square project, Daniel J. Keating, employed Mr. I.E. Greenblatt as the owner's representative. Mr. Greenblatt's function on the Logan Square project was to ensure that bid specifications were followed. With respect to Crown-NJ, Mr. Greenblatt was responsible for seeing to it that Crown-NJ used the proper grade of carpet and related materials. His responsibilities also included the reporting to the project owner of his (Greenblatt's) approval of a subcontractor's work. The project owner would then release payments to the subcontractor, relying upon the recommendation of Greenblatt.

Mr. Greenblatt had contacted Crown-NJ regarding submitting a bid on the Logan Square project and had spoken with Mr. Frank. Mr. Frank submitted a bid to Mr. Keating, which bid was accepted, and the subcontract was awarded. Subsequent to the awarding of the contract, Mr. Frank and Mr. Greenblatt held discussions regarding Mr. Greenblatt's being hired by Crown-NJ as a consultant to "keep an eye" on Crown's subcontractors in Philadelphia to ensure performance. (Since the project was located in Philadelphia, Crown-NJ hired subcontractors to perform the actual contract.) Mr. Gill told Mr. Frank that he was opposed to hiring Mr. Greenblatt, as he believed it was a conflict of interest. Mr. Frank, however, did hire Mr. Greenblatt. Mr. Greenblatt was originally supposed to be paid $25,000. Mr. Greenblatt did subsequently submit an invoice to Mr. Frank in Ohio, and Crown-NJ issued a check in the amount of $15,000 to Mr. Greenblatt from its office in Ohio for consulting services.

Mr. Herwick did not function on the Logan Square project. All of the agreements were negotiated and signed by Mr. Frank. Mr. Herwick knew that Mr. Greenblatt had approached Mr. Frank about serving as Crown-NJ's representative or as a consultant on the project. Mr. Gill discussed Mr. Greenblatt's proposal with Mr. Herwick and both petitioners agreed that Crown-NJ should not accept the proposal. Mr. Herwick felt it was a conflict of interest and possibly illegal. Mr. Herwick told Mr. Frank of his concerns; however, Mr. Frank thought it was a "good deal" and decided to accept the offer. Mr. Frank indicated that he had consulted with his son (who was the corporate counsel) and that his son had opined that the Greenblatt relationship was legal.

(b) The Hilton Project

Crown-NJ had several prior business dealings with the Tishman Construction Company. As such, the companies were known to each other. In June and July of 1985,

Crown-NJ was working as a subcontractor to Tishman Construction Company on what was then the Hilton Hotel Casino project in Atlantic City. During that time, Tishman's general superintendent at the project was Joseph Victoria. Mr. Victoria was the person responsible for reviewing payment requests made by contractors and subcontractors such as Crown-NJ. He could not, however, award contracts or authorize the payment of overtime. During the summer of 1985, Mr. Victoria approached Crown-NJ and asked them if they could carpet his home in Pittsburgh. In order to keep a good customer happy, Crown-NJ arranged for the installation of 70 yards of carpeting in Mr. Victoria's residence in Pittsburgh, Pennsylvania. Crown-NJ did not perform the work itself but instead subcontracted the job. Crown-NJ paid a total of $424.02 to Carpet Craft, an Ohio company, for the installation of the carpet, which carpet was supplied by Crown-NJ. Division investigators questioned Mr. Gill about this subject during an interview on April 25, 1986. At that time, Mr. Victoria had never been sent a bill by Crown-NJ for the installation of the aforesaid carpet. On April 30, 1986, five days after Gill had been questioned by the Division regarding the Victoria issue, Crown-NJ sent an invoice to Victoria for $1,066.81 for the furnishing and installation of carpet that occurred in July 1985. Mr. Gill stated that the company simply "forgot" to bill Mr. Victoria, yet he admitted that as of the date of a sworn interview given to the Division on March 5, 1987, Mr. Victoria still had not paid Crown-NJ for the carpet installation. Mr. Herwick had no involvement with Mr. Victoria's transaction and has no knowledge regarding the payment issue.

Robert Blackman was Tishman's project manager on the Hilton project. As such, he was the person to whom Mr. Victoria reported as well as the person responsible for the selection of contractors. During the project, Mr. Blackman approached Mr. Herwick and told him that after the job was completed he was being transferred. He was moving to a new residence and asked Mr. Herwick if he could give him a good price on carpeting. Mr. Herwick told Mr. Blackman he would take care of it, and Mr. Herwick contacted Thomas Casterelli in Wantagh, New York. Mr. Casterelli is a carpet installer in New York who Mr. Herwick had used as a subcontractor in the past. On January 13, 1986, Crown-NJ received an invoice from Classic Carpet Showroom, Inc. ("Classic"), of Wantagh, New York, in the amount of $844.40 for the installation of carpeting in Mr. Blackman's New York City home. Crown-NJ paid Classic for the work, and Crown-NJ billed Mr. Blackman on January 27, 1986; however, Mr. Blackman did not timely pay Crown-NJ. Crown-NJ sent Mr. Blackman several collection letters, both before and after the Division investigated this matter, and he finally paid $2,500 for the carpeting in August 1987.

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(c) Atlantic Palace Project

Crown-NJ was awarded the carpeting subcontract for the Atlantic Palace Condominium project by Perini Corporation (No. 1406-70), the project's general contractor, and Crown-NJ commenced work on the project in November 1985.

The project manager on the Atlantic Palace job was Roger McElfresh. Mr. McElfresh approached Mr. Herwick about installing carpet in Mr. McElfresh's home. As in the prior instances mentioned above, Crown-NJ subcontracted the work, this time to an individual named William Brennan. Mr. McElfresh was billed by Crown-NJ for the work in a timely manner; however, Mr. McElfresh did not pay Crown-NJ for the carpet installation in a timely manner. Numerous phone calls were made to Mr. McElfresh by Crown-NJ in an effort to collect payment.

Mr. McElfresh was responsible for approving premium overtime. In fact, Mr. McElfresh did authorize the payment of approximately $40,000 in premium overtime to Crown-NJ. Most subcontractors on the project were authorized premium overtime on the project because there was a lucrative, incentive-basis, end-of-job bonus payable to the general contractor based upon early completion of the project. Therefore, the general contractor was authorizing premium overtime to its subcontractors in an effort to complete the job early and collect a sizable bonus.

(d) Irwin LeFevre

During July 1985, the Hilton Corporation employed an individual named Irwin LeFevre as its project manager on the Hilton Hotel/Casino job, a project on which, as noted earlier, Crown-NJ was engaged. A year earlier, on August 28, 1984, Mr. LeFevre had approved a Hilton purchase order to Crown-NJ for $339,631. On July 15, 1985, Crown-Ohio issued its check for $1,213.42 payable to Katherine Herwick, wife of John Herwick. The check represented reimbursement to Mrs. Herwick for a rifle that had been purchased with John Herwick's credit card and given to Mr. LeFevre by Mr. Herwick as a gift. The cost of the rifle had been charged to the "Promotional & Entertainment" account.

Mr. Herwick and Mr. LeFevre had become friends in Florida, and both men were hunters. When the Hilton Corporation was about to leave Atlantic City, Mr.

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Herwick decided to give Mr. LeFevre a rifle as a going-away present. Mr. Herwick stated this was a personal gift rather than a company gift and that the reimbursement had been incorrectly charged to the corporate entertainment account. The cost of the rifle should have been deducted from his year-end distribution of company profits.

Upon learning of this discrepancy, Mr. Herwick immediately had the situation corrected. Within three weeks of the Herwick interview, the Division received a copy of a corrected Internal Revenue Service Form 1099 that had been issued to John Herwick for 1985. The corrected 1099 was in the amount of $1,213.42, exactly the amount of the cost of the rifle that was given to Mr. LeFevre.

(e) The Sands Incident

In 1981, Floor Installers, Inc., received a contract with the Sands Hotel Casino in Atlantic City. Floor Installers received this contract based upon the recommendation of William Clause,[2] who was then the Facility Director of the Sands. Mr. Gill was asked by Mr. Clause to give him (Clause) a price on installing ceramic tile at his residence. Even though they did not do that type of work, since the Sands was a good customer Mr. Gill told Mr. Clause that he would take care of it. Floor Installers subcontracted the job to Edward A. Filling, Inc., because Floor Installers did not do ceramic work. On August 11, 1982, $3,300 in ceramic tile work was completed at Mr. Clause's personal residence by Edward A. Filling, Inc., 216 East White Horse Pike, Absecon, New Jersey. After completing the work, the Filling Company sent an invoice to Floor Installers for the work performed. Mr. Clause was never billed by Floor Installers and he never paid for the tile work. Mr. Clause was not told the work would be performed for free; however, the work was performed just prior to Floor Installers' entering into Chapter 11. At that time, Floor Installers was in a state of disarray and was looking to collect on large obligations owed to it. They simply missed collecting on this small debt for work performed by another company.

The petitioners performed the above services as an accommodation to their customers. They took pride in their work, and when asked by a customer to perform some outside service, the petitioners would attempt to comply with the request. The

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2 Mr. Clause formerly held a casino key employee license (1804011). He resigned from the Sands on January 7, 1983, and does not now possess any casino license in this jurisdiction.

petitioners were not interested in doing this type of work, but they did do a few jobs of this sort as accommodations. The petitioners usually did not perform these type of services themselves but would instead subcontract the job out to other companies.

II. The Alleged Sham Joint Venture

Messrs. Gill and Herwick met George Miller through Mr. Ed Bosh in 1978 or 1979. Mr. Bosh was the owner of Action Technical Services, a company which performed janitorial services for Floor Installers' offices. Mr. Miller worked for Mr. Bosh. Mr. Bosh approached the petitioners regarding performing janitorial services in conjunction with installing carpeting. The petitioners agreed and Mr. Herwick began soliciting cleaning services in conjunction with installing carpeting. One cleaning would be performed before and after carpet was installed.

After a period of time, Mr Bosh left the industry and Mr. Miller's company, Eagle Cleaning Systems, assumed Action Technical Services' contract to clean the offices of what had become Crown-NJ. Miller continued to clean the offices of Crown-NJ until Crown-NJ closed in 1987.

In 1984, Mr. Miller wanted to become more involved in Crown-NJ's business. Mr. Miller approached Mr. Frank on several occasions about creating a joint venture to provide cleaning services. The petitioners discussed the matter with Messrs. Frank and Sukenik; however, they merely acted as advisors and did not negotiate, prepare, draft or sign the joint venture agreement.

The joint venture was officially established on November 15, 1984, when Miller and Herman Frank executed a "Joint Venture Agreement" that had been drafted by Irwin Frank, son of Herman Frank and an Ohio attorney. Miller testified that he was to be the majority owner of the joint venture. On a disclosure affidavit filed in 1985 with the Minority Entrepreneurship Development Corporation,[3] Eagle Cleaning Systems is listed as

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3 The Minority Entrepreneurship Development Corporation ("MEDCO") was, at the time, a private corporation whose function was to certify certain qualified businesses as minority-owned or minority-controlled enterprises. The joint venture applied for and received a certificate from MEDCO that stated that Eagle-Crown was a "minority business enterprise." MEDCOs regulations provided that in order to be considered a "minority business enterprise," a business must be at least 51 percent owned by one or more minorities and the business management or daily operation must be controlled by one or more minority persons.

a 55-percent owner of the joint venture and Crown-NJ is listed as a 45-percent owner thereof.

The joint venture was formed to bid on minority set-aside contracts. In 1984, the joint venture bid on, and was awarded, a subcontract at the Hilton project. Crown-NJ had two contracts at the Hilton site; one for tile work and one for floor covering. The joint venture involved the floor covering portion of the contract. Mr. Miller was supposed to apprentice on this job since it was his first job and he was just learning the business. As such, Crown-NJ installed all of the floor covering and Eagle Cleaning Systems performed all of the post-installation cleaning at the site.

Mr. Miller did not exercise control over the floor covering portion of the contract. Mr. Miller did very little on the project and was never available. The petitioners made numerous attempts to involve Mr. Miller in the project; however, he was never available. Meetings would be scheduled, and he would not attend. He would not show up on the job site. The petitioners would even go to Mr. Miller's house in an attempt to find him, with very little success. As a result of Mr. Miller's uncooperative attitude, Crown-NJ had to complete most of the work.

On the Hilton project, the joint venture was the general contractor with Crown-NJ and Eagle Cleaning working as subcontractors. Crown-NJ received approximately $100,000 for installing the floor covering and Eagle Cleaning received $10,600 for providing the cleaning services. Mr. Miller supervised all cleaning services and did some payroll work for the joint venture.

Mr. Miller provided two interviews with the Division. The transcripts of those interviews are in evidence (R-1 & R-2). In those interviews, Mr. Miller stated that the petitioners never intended his company to participate in a meaningful way in the contract. He stated that the joint venture was a front used by the petitioners to obtain minority set-aside contracts and that Eagle Cleaning was not expected to perform any work for the joint venture.

In 1985, the joint venture was involved in one other project. The joint venture obtained a subcontract from Tishman, the general contractor who was to build the 75-story Metropolitan Plaza Apartment Building in New York City. The petitioners and Mr. Miller attended a pre-bid meeting at Tishman's offices in New York City. Two contracts were awarded: one for $50,000 and one for $190,000.

III. Fraudulent Performance Bond

In 1980, when Floor Installers was still in existence, Messrs. Gill and Herwick learned of a subcontract that was available from Tishman on the GNAC Corporation ("Golden Nugget") project in Atlantic City. However, in order to receive the subcontract (valued at $318,000), Floor Installers had to post a performance bond for that sum. Messrs. Gill and Herwick both believed that Floor Installers would not have been awarded the Golden Nugget subcontract had they been unable to obtain such a bond. Their initial efforts to arrange for the bond were unsuccessful. Mr. Herwick spoke with Leo Spinelli of Tishman regarding Floor Installers' difficulty in obtaining a bond, and Mr. Spinelli referred him to John Rilley. Mr. Rilley was familiar with procedures to obtain bonds for companies that were having difficulty securing bonds. Mr. Rilley knew of bonding companies that took high risks.

Mr. Rilley introduced Mr. Herwick to Alex Fineman of Industrial Indemnity, Co., N.A.[4] Mr. Herwick was asked to take his company's financial statements to Mr. Fineman's office in Pomona. Mr. Herwick complied and discovered that Mr. Fineman's office was in a "swinger's club" in Pomona. Mr. Herwick went to Mr. Fineman's office and discussed the contract. Floor Installers had a poor debt-to-net-worth ratio.

Mr. Fineman contacted Floor Installers and awarded the bond. Floor Installers made two payments on the bond: the first payment was made by Mr. Herwick to Mr. Fineman; the second payment was made by Mr. Gill to Mr. Fineman and consisted of $4,000 cash delivered in a paper bag.

Mr. Herwick called the telephone number listed on the letterhead of Industrial Indemnity Co., N.A., in Philadelphia and the telephone was answered in the company's name. The petitioners provided the bond contract to Tishman. Tishman is a large national construction company headquartered in New York. Tishman forwarded the contract to their insurance and legal offices for approval. Approximately two weeks later, Tishman notified Floor Installers that the bond was acceptable.

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4 Mr. Rilley was paid a finder's commission by Mr. Fineman for referring the petitioners to him.

Division investigation disclosed that Alex Fineman (a.k.a. Alex Feim, Al Davis, Alex Feinstein, Calvin York and Alex Fein) has been arrested numerous times and has been convicted of conspiracy, wire fraud and bribery of federal officials. Fineman had been convicted in August 1980 of certain federal offenses including mail fraud, wire fraud and interstate transportation of fraudulent securities.

C. Petitioner's Background

I. Mr. Gill

John J. Gill is 42 years old. He has been married for 20 years, has three children, ages 16, 17, and 19, and provides a home for a 19-year-old homeless youth. Mr. Gill is a practicing Roman Catholic. He was raised through the Catholic school system and graduated from St. Joseph's University with a B.S. degree in English with a minor in philosophy. Mr. Gill has been active in the Boy Scouts, little league, Knights of Columbus, Kiwanis Club, the Pleasantville Businessmen's Association, and the Men of Malvery (a retreat group). Mr. Gill has also contributed to his church, schools and other charitable organizations. He has donated both services and materials to various organizations, including donating carpet removed from various projects to schools.

Mr. Gill graduated from college in 1968. He then spent the next five years working for the First Pennsylvania Bank, first as a management trainee and then as a commercial loan analyst. Mr. Gill then decided to start his own business. He operated Hill Kitchen and Floor Center for the next five years. In 1975, Mr. Gill formed Floor Installers and moved from Pennsylvania to Cape May County. In 1983, Crown-NJ was formed. The Division objected to the licensure of Crown-NJ, and the company is now inactive. In November 1987, Mr. Gill became employed by Baumgardner Construction Company. Mr. Gill's job was terminated in March 1988 due to the Division's objection to Baumgardner's relicensure based upon Messrs. Gill and Herwick's employment with the company. In April 1988, Mr. Gill became employed by the Einstein-Moomjy Carpet Company as a commission salesman. Ninety days later, his position was terminated due to his casino licensing problem. Mr. Gill is now unemployed. He is looking for work in the carpet industry and is assisting his wife, who has a paper route.

Father John C. Killeen, pastor of the Catholic Church of St. Mary in Cherry Hill, testified on behalf of Mr. Gill. Father Killeen testified that he first met Mr. Gill 12 years ago, when he was the pastor of St. Joseph's Church in Sea Isle City. St. Joseph's

school was in poor repair and short-funded. Mr. Gill offered to help the school cover its floors. Over a period of time, Mr. Gill carpeted the entire school with first-quality carpet that had been replaced in casinos and with carpet remnants left over from casino jobs. Various casinos had purchased new carpet, and Mr. Gill received their permission to install their old carpeting and carpet remnants in the school. Father Killeen believes Mr. Gill was a good friend to the school and the community. He has no reservations regarding Mr. Gill's good character and good name. He believes Mr. Gill is a good citizen and Mr. Gill still "rates very high in [his] book."

II. Mr. Herwick

John S. Herwick is 46 years old. He has been married for 24 years and has an 18-year-old son who is attending Valley Forge Military Academy Junior College. He has been active in the Pleasantville Businessmen's Association, the Mainland Kiwanis, the 1984 U.S. Olympic Committee Dinner Committee, the El Paso Jaycees, Boy Scouts, Y.M.C.A., and has coached and umpired in both little league and Babe Ruth league. He graduated high school from the Valley Forge Military Academy, and graduated from the Pennsylvania Military College in 1965 with a degree in English. He has been an active member of the Holy Trinity Episcopal Church of Ocean City and the Valley Forge Military Academy Alumni Association. He has volunteered to serve on several committees for the Academy.

From 1962 until 1968, Mr. Herwick was in the Marine Reserve. He attained the rank of E-4 and was separated with an Honorable Discharge. He was awarded the Good Conduct Medal and the Marine Corps Reserve Medal.

Mr. Herwick was first employed as a sales representative for Norcross, Inc., of St. Louis. His sales territory was in El Paso, Texas. In 1968, Mr. Herwick and his family moved east in order to care for his mother-in-law, who had sustained a broken hip. He became employed as a sales representative for Buzza Cardozo of Narbeth, Pennsylvania. In 1972, he entered the carpet business. He became the district manager for the Raymond Rosen Company of Philadelphia. In 1975, he entered into partnership with Mr. Gill to form Floor Installers, Inc., and moved to New Jersey.

Since he was unable to either hold or obtain employment in the carpet industry in this area due to these proceedings, Mr. Herwick has had to move his family to Arnold,

Maryland. He is now employed as a sales representative for Contract Distributors Corp. of Bethesda, Maryland. He is a commission salesman for commercial carpet products and floor coverings.

Mr. Herwick submitted ten letters of recommendation in his own behalf. The first, dated March 30, 1988, was written by Christer Lindkrantz, vice-president of hotel operations, Tropicana Hotel and Casino. Mr. Lindkrantz wrote:

> I would like to state that I have known Mr. Herwick since approximately 1980, and it is my personal opinion that Mr. Herwick has always conducted himself in a very professional and businesslike manner. During our business relationship, he has never done anything to indicate to me that he would conduct his business in any other way except with honor and integrity.
>
> Mr. Read, in closing, I would like to say that in my opinion, Mr. Herwick is a man of good standing and character. [P-1]

The second, dated April 6, 1988, was written by Cliff Lucas, vice-president of operations for the Perini Corporation. Mr. Lucas wrote:

> We wish to confirm that Perini Corporation has had a number of years of contractual relationships involving Mr. Herwick. We have found that Mr. Herwick has always acted professionally and responsibly in the course of his business conduct with Perini Corporation and we [consider] him to be a man of integrity and good character. [P-2]

The third, dated March 25, 1988, was written by Charles Totoro, director of engineering at the Tropicana Hotel and Casino. Mr. Totoro wrote:

> My business as well as personal relationship with Mr. Herwick dates back to 1983, and has continued to the present time. Throughout this five-year period, Mr. Herwick has had an opportunity to perform numerous work related projects through me for the Tropicana. In every case, Mr. Herwick displayed personal integrity, complete professionalism while maintaining a completely ethical relationship.
>
> Mr. Herwick's knowledge of his profession and commitment to all of our projects have been an enormous help to me personally and the Tropicana in general.
>
> Throughout the years I have developed a personal relationship with John, and his high moral character is one that I feel very comfortable with and personally attest to. [P-3]

The fourth, dated April 7, 1988, written by Nikki M. Jones, executive vice-president and chief operating officer of Atlandia Design, a Golden Nugget Company, provides:

> Atlandia Design & Furnishings, Inc. has over the past few years had various business dealings with Mr. John Herwick. I personally have found him to be a man of good character and integrity. All our business dealings have been handled in a businesslike and professional manner. [P-4]

The fifth letter, dated March 29, 1988, was written by Kitty Lloyd, a shift manager in the engineering department of the Tropicana Hotel and Casino. Mrs. Lloyd wrote:

> I have been employed by the Engineering Department of the Tropicana Hotel/Casino for the past seven (7) years and in my capacity as Shift Manager I have worked with John Herwick on many projects. During this lengthy business relationship John has always handled business honestly and I know him as a man of good character and integrity. [P-5]

The sixth letter, dated April 4, 1988, was written by Emil J. Neumann, director of facilities, engineering and maintenance, at Trump Plaza Hotel and Casino. Mr. Neumann wrote:

> As Chief Engineer for 9 years at the Claridge Hotel and Casino, and in my present position as Director of Facilities, Engineering and Maintenance at the Trump Plaza Hotel and Casino, I have done quite a substantial amount of business with Mr. John Herwick and have found his character to be above and beyond reproach. He is one of the most pleasant and professional businessmen that I have had the opportunity to deal with. [P-6]

Russell E. Preston, safety manager of the Perini Corporation, in a letter dated April 4, 1988, addressed Mr. Herwick's adherence to affirmative action policies. Mr. Preston wrote:

> I have known Mr. John Herwick for approximately three and one-half years. During the time of my association with John I held the position of Regional Manager of Safety & Affirmative Action for the Atlantic City Region.
>
> To the best of my knowledge he was employed by the Crown Carpeting Company all of that time until he joined the Baumgardner Corporation. My personal association with John was assuming his companies compliance with Affirmative Action

> Requirements & Policies. He was always very cooperative in this phase of his business. He was always honorable and responsive to my requests. [P-7]

Wayne T. Weingartner, project controller for the Perini Corporation, in a letter dated April 1, 1988, wrote:

> I am writing you to express my feelings about the accusations being made against Mr. John S. Herwick. I have known John in a business associate relationship as a very pleasant, honest, helpful businessman.
>
> While John was working with Crown Carpet he was extremely helpful in making sure I received all requisition payments on time with all necessary supporting documentation. He never requested, sought, or bagained for any special treatment on payment terms. Any extra work slips submitted to Perini Corporation were always signed by a field superintendent and processed with a fully executed Change Order to Crown Carpet's contract.
>
> John's only fault, I find, probably lies with the fact that he is such a pleasant person who always finds time to say more than just "hi." He has always been one of the friendliest people I have had business dealings with here in Atlantic City.
>
> I cannot believe that John would be involved in any business dealings that were other than honorable.
>
> Commissioner Read, I surely hope that you find the accusations against Mr. John Herwick without merit and dismiss the charges against him. I am sure you will not be sorry for such an act, and will realize in the future that your decision was the right one for all the parties concerned. [P-9]

D. Credibility

This case turns on the credibility of the witnesses. I have had ample opportunity to assess the parties' and witnesses' credibility. I listened carefully to their testimony, making judgments about internal consistency, probability and reasonability, Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954), and, during direct and cross-examination, I observed the witnesses' demeanor, including their mannerisms, voice levels, anger, frustration and other such emotions not apparent on the written record. From the testimony, exhibits and especially my careful observations of the witnesses, I make the following observations.

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The Division did attempt to refute the petitioners' testimony concerning the circumstances underlying the incident and their current good character, honesty and integrity. It is essential in this case to assess their credibility. Initially, their position in this matter must be recognized. As the petitioners and the applicants for casino service industry qualifications, they have a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioners' demeanor, the plausibility of their testimony, the manner in which they participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioners testified truthfully in every regard. They were extremely open, honest and frank. They appeared to be hardworking businessmen and good family men. The Division's investigator conceded that at no time did either of the petitioners attempt to conceal any information, files or other paperwork from her. Accordingly, I am persuaded to accept their testimony in all respects.

On the other hand, the Division has been appearing before me in Commission cases for over two years, and its witnesses in this case were the worst witnesses the Division has ever presented before me. At times, the Division's investigator was very rude and obnoxious. It appeared that she had tried to impose her own personal standards and perceptions upon the petitioners as well as her own sense as to what are or are not acceptable business practices in the industry. She has been an investigator for the Division since 1981, yet she testified that she does not, and it is not her job to, evaluate the credibility of her informants. She makes no effort to investigate or determine if there is any truth to their statements. She merely reports their information. Not only did I find this information utterly incredible, but when the agent admitted her lack of investigation to determine the truth of her informants' statements, my court reporter, who is usually totally emotionless and extremely professional, dropped her mouth open and had a look of total disbelief on her face. The investigator appeared to be overly zealous and set forth every small innuendo in an attempt to disqualify the petitioners from qualification.

The investigator relied on the information of several witnesses. I must strongly question the reliability and credibility of most of these witnesses. Several of them appear to be disreputable.

a. As indicated above, Alex Fineman (a.k.a. Alex Feim, Al Davis, Alex Feinstein, Calvin York and Alex Fein) has been arrested numerous times and has been convicted of conspiracy, wire fraud and bribery of federal officials. Fineman had been convicted in August 1980 of certain federal offenses including mail fraud, wire fraud and interstate transportation of fraudulent securities. Mr. Fineman admitted to the Division that he attracted customers whose financial instability had prevented them from securing a bond through legitimate channels. Fineman would claim to be an agent of a legitimate bonding company but would, when writing the bond, change the name of the legitimate company by adding the initials "NA" to the lawful company's name. The initials "NA" stand for Netherlands Antilles, and by adding them, Fineman stated, he was able to avoid allegations that he was fraudulently misrepresenting the legitimate bonding company. In this way, a general contractor who examined Fineman's bond by looking in Best's Guide of Insurance Companies would see the name of a legitimate company and would conclude that the bond was proper. Fineman admitted to the Division that he was merely "writing paper" and that there was no bond in reality.

b. Another witness, Jim Adams, was terminated from his position at the Playboy Hotel and Casino for accepting favors from contractors. The Division investigator was unaware of a conflict between the petitioners and Mr. Adams. Floor Installers had stopped work at the Playboy because Playboy owed them money. Mr. Adams then terminated the contract between Playboy and Floor Installers.

c. The investigator also relied on information given by a former employee of Floor Installers, William Farley. Mr. Farley was the target of an FBI investigation. Mr. Farley embezzled funds from Floor Installers by opening a fraudulent bank account in the name of Floor Installers and transferring converted checks into that account. The FBI investigation found no involvement by the petitioners in the allegations Mr. Farley made to the Division.

d. George Miller and Eagle Cleaning Systems were the subject of another OAL hearing: Eagle Cleaning Systems v. Division of Gaming Enforcement, OAL DKT. CCC 1276-88 (Oct. 20, 1988). The Division requests that consideration be given to that decision.

> ". . . there are important goals to be achieved from the prudent and selective application in administrative proceedings of such doctrines as res judicata, collateral estoppel, and the single

> controversy rule." Hackensack v. Winner, 82 N.J. 1, 31 (1980) . . . The findings of an administrative law judge, when fully and amply supported by substantial credible evidence in the record and amply enlarged by specific detailed findings of fact, can suffice to provide the Law Division with prima facie evidence of validity of the individual claims by a limited application of the doctrine of res judicata . . . "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose."

[Sheeran v. Progressive Life Ins. Co., 182 N.J. Super 237, 251 (App. Div. 1981)]

Further, our Supreme Court has held that

> When a court or agency retains jurisdiction to resolve a dispute, it can take account of factfinding made in complementary proceedings . . . Though not binding, the Compensation Court's findings should be entered into evidence in the Law Division and accorded such weight as is appropriate. In evaluating the findings, the court should consider the evidence submitted; the procedures used for admitting evidence; the employee's standing to contest the issues; whether the employer represented the employee's interests; and whether the award itself was well-reasoned and intrinsically persuasive.

[Wunschel v. City of Jersey City, 96 N.J. 651, 666-67]

In Eagle Cleaning, Judge Holmes only had the personal testimony of George Miller. While finding that the Eagle Cleaning/Crown-NJ joint venture was a sham, Judge Holmes found that:

> There are discrepancies between Miller's testimony at depositions and his testimony at the hearing. At the hearing Miller tried to avoid responsibility for admissions against interest made at depositions by asserting that the transcripts were not accurate. He also claimed that he thought he was "helping" the Division prosecute Frank and his accomplices. (Apparently his motive was revenge). At the hearing Miller testified that he did administrative work, i.e., he looked at blue prints. At the depositions Miller acknowledged that he performed no services on the contracts. At the hearing he acknowledged that the joint venture was a sham but that he had been "duped." [Initial Decision at 4]

Judge Holmes concluded that Mr. Miller lacked the requisite good character, honesty and integrity for casino service industry licensure.

While I acknowledge that a judge should consider the assessment of credibility made by another judge of a witness who did not appear before him in the instant case but who did appear before the other judge in another case (and I do take into consideration Judge Holmes's statements regarding Mr. Miller's credibility in the Eagle Cleaning case), I note as I did on the record that I was the original ALJ assigned to hear the Eagle Cleaning case. As such, I had occasion to make a personal observation of Mr. Miller, and I had the opportunity to make a personal assessment of Mr. Miller's credibility. I could not help but notice that many of the problems which the petitioners experienced in dealing with Mr. Miller were the same problems I experienced in dealing with Mr. Miller. Meetings would be scheduled, and Mr. Miller would not appear. Telephone conferences would be scheduled, and Mr. Miller would be unavailable. Requests for discovery were made, and Mr. Miller would not comply. Orders to compel discovery were issued, and Mr. Miller ignored them. Mr. Miller would not return phone calls and was totally uncooperative with his attorney. I found Mr. Miller to be totally unreliable, and I would not believe him if my life depended on it.

FINDINGS OF FACT

1. Floor Installers, Inc., was incorporated in Pennsylvania in 1975. The officers and owners of that firm were John Gill, Patricia Gill (John Gill's wife), John Herwick and Katherine Herwick (John Herwick's wife). Floor Installers was engaged primarily in the installation of carpet on behalf of retail stores. Floor Installers applied for and received a casino service industry license (#149-70) in 1979.

2. On September 14, 1983, Crown-Ohio formed Crown-NJ, a wholly-owned subsidiary of Crown-Ohio. Directors of Crown-NJ were Herman Frank and Bill Sukenik, both of whom were owners and officers of Crown-Ohio. Officers of Crown-NJ were as follows: Herman Frank, President; Bill Sukenik, Secretary; Elda Rinaldi Gerrard, Assistant Secretary; John Gill, Director of Operations; and John Herwick, Director of Marketing.

3. On August 20, 1984, Crown-Ohio purchased Floor Installers' assets, goodwill and service contracts for $12,000. The sale was approved by Floor Installers' trustee-in-bankruptcy.

4. Messrs. Frank and Sukenik retained control of Crown-NJ. Messrs. Gill and Herwick were the company's sales representatives in New Jersey. Messrs. Gill and Herwick, as salesmen for the company, could negotiate contracts; however, they did not have the authority to sign contracts. Only Mr. Frank or Mr. Sukenik could sign contracts and obligate the company. The petitioners had little authority to make policy in Crown-NJ.

5. In 1984, Crown-NJ obtained a subcontract worth $450,000 on a Philadelphia project known as Logan Square. The owner of the Logan Square project, Daniel J. Keating, employed Mr. I.E. Greenblatt as the owner's representative. Mr. Greenblatt's function on the Logan Square project was to ensure that bid specifications were followed. With respect to Crown-NJ, Mr. Greenblatt was responsible for seeing to it that Crown-NJ used the proper grade of carpet and related materials. His responsibilities also included the reporting to the project owner of his (Greenblatt's) approval of a subcontractor's work. The project owner would then release payments to the subcontractor, relying upon the recommendation of Greenblatt.

6. Subsequent to the awarding of the contract, Mr. Frank and Mr. Greenblatt held discussions regarding Mr. Greenblatt's being hired by Crown-NJ as a consultant to "keep an eye" on Crown's subcontractors in Philadelphia to ensure performance. Mr. Gill told Mr. Frank that he was opposed to hiring Mr. Greenblatt as he believed it was a conflict of interest. Mr. Frank, however, did hire Mr. Greenblatt. Mr. Greenblatt did subsequently submit an invoice to Mr. Frank in Ohio, and Crown-NJ issued a check in the amount of $15,000 to Mr. Greenblatt from its office in Ohio for consulting services.

7. Mr. Herwick did not function on the Logan Square project. All of the agreements were negotiated and signed by Mr. Frank. Mr. Gill discussed Mr. Greenblatt's proposal with Mr. Herwick and both petitioners agreed that Crown-NJ should not accept the proposal. Mr. Herwick felt it was a conflict of interest and possibly illegal. Mr. Herwick told Mr. Frank of his concerns; however, Mr. Frank thought it was a "good deal" and decided to accept the offer.

8. In June and July of 1985, Crown-NJ was working as a subcontractor to Tishman Construction Company on what was then the Hilton Hotel Casino project in Atlantic City. During that time, Tishman's general superintendent at the project was Joseph Victoria. Mr. Victoria was the person responsible for reviewing payment requests made by contractors and subcontractors such as Crown-NJ. He could not, however, award contracts or authorize the payment of overtime.

9. During the summer of 1985, Mr. Victoria approached Crown-NJ and asked them if they could carpet his home in Pittsburgh. In order to keep a good customer happy, Crown-NJ arranged for the installation of 70 yards of carpeting in Mr. Victoria's residence in Pittsburgh, Pennsylvania. Crown-NJ did not perform the work itself but instead subcontracted the job. Crown-NJ paid a total of $424.02 to Carpet Craft, an Ohio company, for the installation of the carpet, which carpet was supplied by Crown-NJ.

10. Division investigators questioned Mr. Gill about this subject during an interview on April 25, 1986. At that time, Mr. Victoria had never been sent a bill by Crown-NJ for the installation of the aforesaid carpet. On April 30, 1986, five days after Gill had been questioned by the Division regarding the Victoria issue, Crown-NJ sent an invoice to Victoria for $1,066.81 for the furnishing and installing of carpet that occurred in July 1985. The company simply "forgot" to bill Mr. Victoria.

11. Mr. Herwick had no involvement with Mr. Victoria's transaction and has no knowledge regarding the payment issue.

12. Robert Blackman was Tishman's project manager on the Hilton project. As such, he was the person to whom Mr. Victoria reported and was the person responsible for the selection of contractors.

13. During the project, Mr. Blackman approached Mr. Herwick and told him that after the job was completed, he was being transferred. He was moving to a new residence and asked Mr. Herwick if he could give him a good price on carpeting. Mr. Herwick told Mr. Blackman he would take

care of it, and Mr. Herwick contacted Thomas Casterelli in Wantagh, New York. Mr. Casterelli is a carpet installer in New York who Mr. Herwick had used as a subcontractor in the past.

14. On January 13, 1986, Crown-NJ received an invoice from Classic Carpet Showroom, Inc., of Wantagh, New York, in the amount of $844.40 for the installation of carpeting in Mr. Blackman's New York City home.

15. Crown-NJ paid Classic for the work, and Crown-NJ billed Mr. Blackman on January 27, 1986; however, Mr. Blackman did not timely pay Crown-NJ. Crown-NJ sent Mr. Blackman several collection letters, both before and after the Division investigated this matter, and he finally paid $2,500 for the carpeting in August 1987.

16. Crown-NJ was awarded the carpeting subcontract for the Atlantic Palace Condominium project by Perini Corporation, the project's general contractor, and Crown-NJ commenced work on the project in November 1985.

17. The project manager on the Atlantic Palace job was Roger McElfresh. Mr. McElfresh approached Mr. Herwick about installing carpet in Mr. McElfresh's home. As in the prior instances mentioned above, Crown-NJ subcontracted the work, this time to an individual named William Brennan.

18. Mr. McElfresh was billed by Crown-NJ for the work in a timely manner; however, Mr. McElfresh did not pay Crown-NJ for the carpet installation in a timely manner. Numerous phone calls were made to Mr. McElfresh by Crown-NJ in an effort to collect payment.

19. Mr. McElfresh was responsible for approving premium overtime. In fact, Mr. McElfresh did authorize the payment of approximately $40,000 in premium overtime to Crown-NJ. Most subcontractors on the project were authorized premium overtime on the project because there was a lucrative, incentive-basis, end-of-job bonus payable to the general contractor based upon early completion of the project. Therefore, the

general contractor was authorizing premium overtime to its subcontractors in an effort to complete the job early and collect a sizable bonus.

20. During July 1985, the Hilton Corporation employed an individual named Irwin LeFevre as its project manager on the Hilton Hotel/Casino job, a project on which Crown-NJ was engaged.

21. A year earlier, on August 28, 1984, Mr. LeFevre had approved a Hilton purchase order to Crown-NJ for $339,631.

22. On July 15, 1985, Crown-Ohio issued its check for $1,213.42 payable to Katherine Herwick, wife of John Herwick. The check represented reimbursement to Mrs. Herwick for a rifle that had been purchased with John Herwick's credit card and given to Mr. LeFevre by Mr. Herwick as a gift. The cost of the rifle had been charged to the "Promotional & Entertainment" account.

23. Mr. Herwick and Mr. LeFevre had become friends in Florida, and both men were hunters. When the Hilton Corporation was about to leave Atlantic City, Mr. Herwick decided to give Mr. LeFevre a rifle as a going-away present. This was a personal gift rather than a company gift and the reimbursement had been incorrectly charged to the corporate entertainment account. The cost of the rifle should have been deducted from his year-end distribution of company profits.

24. Upon learning of this discrepancy, Mr. Herwick immediately had the situation corrected. Within three weeks of the Herwick interview, the Division received a copy of a corrected Internal Revenue Service Form 1099 that had been issued to John Herwick for 1985. The corrected 1099 was in the amount of $1,213.42, exactly the amount of the cost of the rifle that was given to Mr. LeFevre.

25. In 1981, Floor Installers, Inc., received a contract with the Sands Hotel Casino in Atlantic City. Floor Installers received this contract based upon the recommendation of William Clause, who was then the Facility Director of the Sands.

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26. Mr. Gill was asked by Mr. Clause to give him (Clause) a price on installing ceramic tile at his residence. Even though they did not do that type of work, since the Sands was a good customer Mr. Gill told Mr. Clause that he would take care of it. Floor Installers subcontracted the job to Edward A. Filling, Inc., because Floor Installers did not do ceramic work.

27. On August 11, 1982, $3,300 in ceramic tile work was completed at Mr. Clause's personal residence by Edward A. Filling, Inc. After completing the work, the Filling Company sent an invoice to Floor Installers for the work performed.

28. Mr. Clause was never billed by Floor Installers and he never paid for the tile work. Mr. Clause was not told the work would be performed for free; however, the work was performed just prior to Floor Installers entering into Chapter 11. At that time, Floor Installers was in a state of disarray and was looking to collect on large obligations owed to it. They simply missed collecting on this small debt for work performed by another company.

29. The petitioners performed the above services as an accommodation to their customers. They took pride in their work, and when asked by a customer to perform some outside service, the petitioners would attempt to comply with the request. The petitioners were not interested in doing this type of work, but they did do a few jobs of this sort as accommodations. The petitioners usually did not perform these type of services themselves but would subcontract the job out to other companies.

30. In 1984, Mr. George Miller, owner of Eagle Cleaning Systems, wanted to become more involved in Crown-NJ's business. Mr. Miller approached Mr. Frank on several occasions about creating a joint venture to provide cleaning services. The petitioners discussed the matter with Messrs. Frank and Sukenik; however, they merely acted as advisors and did not negotiate, prepare, draft or sign the joint venture agreement.

31. The joint venture was officially established on November 15, 1984, when Miller and Herman Frank executed a "Joint Venture Agreement" that had been drafted by Irwin Frank, son of Herman Frank and an Ohio attorney.

32. On a disclosure affidavit filed in 1985 with the Minority Entrepreneurship Development Corporation, Eagle Cleaning Systems is listed as a 55-percent owner of the joint venture and Crown-NJ is listed as a 45-percent owner thereof.

33. The joint venture was formed to bid on minority set-aside contracts. In 1984, the joint venture bid on, and was awarded, a subcontract at the Hilton project. Crown-NJ had two contracts at the Hilton site; one for tile work and one for floor covering. The joint venture involved the floor covering portion of the contract.

34. Mr. Miller was supposed to apprentice on this job since it was his first job and he was just learning the business. As such, Crown-NJ installed all of the floor covering and Eagle Cleaning Systems performed all of the post-installation cleaning at the site.

35. Mr. Miller did not exercise control over the floor covering portion of the contract. Mr. Miller did very little on the project and was never available. The petitioners made numerous attempts to involve Mr. Miller in the project; however, he was never available. Meetings would be scheduled, and he would not attend. He would not show up on the job site. The petitioners would even go to Mr. Miller's house in an attempt to find him, with very little success. As a result of Mr. Miller's uncooperative attitude, Crown-NJ had to complete most of the work.

36. On the Hilton project, the joint venture was the general contractor with Crown-NJ and Eagle Cleaning working as subcontractors. Crown-NJ received approximately $100,000 for installing the floor covering and Eagle Cleaning received $10,600 for providing the cleaning services. Mr. Miller supervised all cleaning services and did some payroll work for the joint venture.

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37. In 1985, the joint venture was involved in one other project. The joint venture obtained a subcontract from Tishman, the general contractor who was to build the 75-story Metropolitan Plaza Apartment Building in New York City. The petitioners and Mr. Miller attended a pre-bid meeting at Tishman's offices in New York City. Two contracts were awarded: one for $50,000 and one for $190,000.

38. In 1980, when Floor Installers was still in existence, Messrs. Gill and Herwick learned of a subcontract that was available from Tishman on the GNAC Corporation ("Golden Nugget") project in Atlantic City. However, in order to receive the subcontract (valued at $318,000), Floor Installers had to post a performance bond for that sum.

39. Their initial efforts to arrange for the bond were unsuccessful.

40. Mr. Herwick spoke with Leo Spinelli of Tishman regarding Floor Installers' difficulty in obtaining a bond, and Mr. Spinelli referred him to John Rilley. Mr. Rilley was familiar with procedures to obtain bonds for companies that were having difficulty securing bonds. Mr. Rilley knew of bonding companies that took high risks.

41. Mr. Rilley introduced Mr. Herwick to Alex Fineman of Industrial Indemnity, Co., N.A. Mr. Herwick was asked to take his company's financial statements to Mr. Fineman's office in Pomona. Mr. Herwick complied and discovered that Mr. Fineman's office was in a "swinger's club" in Pomona.

42. Mr. Fineman contacted Floor Installers and awarded the bond. Floor Installers made two payments on the bond: the first payment was made by Mr. Herwick to Mr. Fineman; the second payment was made by Mr. Gill to Mr. Fineman and consisted of $4,000 cash delivered in a paper bag.

43. Mr. Herwick called the telephone number listed on the letterhead of Industrial Indemnity Co., N.A., in Philadelphia and the telephone was answered in the company's name.

44. The petitioners provided the bond contract to Tishman. Tishman is a large national construction company headquartered in New York. Tishman forwarded the contract to their insurance and legal offices for approval. Approximately two weeks later, Tishman notified Floor Installers that the bond was acceptable. The petitioners relied on this information and believed the bond was genuine.

45. John J. Gill is 42 years old. He has been married for 20 years, has three children, ages 16, 17, and 19, and provides a home for a 19-year-old homeless youth.

46. Mr. Gill is a practicing Roman Catholic. He was raised through the Catholic school system and graduated from St. Joseph's University with a B.S. degree in English with a minor in philosophy.

47. Mr. Gill has been active in the Boy Scouts, little league, Knights of Columbus, Kiwanis Club, the Pleasantville Businessmen's Association, and the Men of Malvery (a retreat group). Mr. Gill has also contributed to his church, schools, and other charitable organizations. He has donated both services and materials to various organizations, including donating carpet removed from various projects to schools.

48. Mr. Gill graduated from college in 1968. He then spent the next five years working for the First Pennsylvania Bank, first as a management trainee and then as a commercial loan analyst. Mr. Gill then decided to start his own business. He operated Hill Kitchen and Floor Center for the next five years. In 1975, Mr. Gill formed Floor Installers and moved from Pennsylvania to Cape May County. In 1983, Crown-NJ was formed. In November 1987, Mr. Gill became employed by Baumgardner Construction Company. Mr. Gill's job was terminated in March 1988 due to the Division's objection to Baumgardner's relicensure based upon Messrs. Gill and Herwick's employment with the company. In April 1988, Mr. Gill became employed by Einstein-Moomjy Carpet Company as a commission salesman. Ninety days later, his position was terminated due to his casino licensing problem. Mr. Gill is now unemployed. He is looking for work in the carpet industry and is assisting his wife, who has a paper route.

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49. John S. Herwick is 46 years old. He has been married for 24 years, and has an 18-year-old son who is attending Valley Forge Military Academy Junior College.

50. He has been active in the Pleasantville Businessmen's Association, the Mainland Kiwanis, the 1984 U.S. Olympic Committee Dinner Committee, the El Paso Jaycees, Boy Scouts, Y.M.C.A., and has coached and umpired in both little league and Babe Ruth league.

51. He graduated high school from the Valley Forge Military Academy, and graduated from the Pennsylvania Military College in 1965 with a degree in English. He has been an active member of the Holy Trinity Episcopal Church of Ocean City and the Valley Forge Military Academy Alumni Association. He has volunteered to serve on several committees for the Academy.

52. From 1962 until 1968, Mr. Herwick was in the Marine Reserve. He attained the rank of E-4 and was separated with an Honorable Discharge. He was awarded the Good Conduct Medal and the Marine Corps Reserve Medal.

53. Mr. Herwick was first employed as a sales representative for Norcross, Inc., of St. Louis. His sales territory was in El Paso, Texas. In 1968, Mr. Herwick and his family moved east in order to care for his mother-in-law, who had sustained a broken hip. He became employed as a sales representative for Buzza Cardozo of Narbeth, Pennsylvania. In 1972, he entered the carpet business. He became the district manager for the Raymond Rosen Company of Philadelphia. In 1975, he entered into partnership with Mr. Gill to form Floor Installers, Inc., and moved to New Jersey.

54. Mr. Herwick has had to move his family to Arnold, Maryland. He is now employed as a sales representative for Contract Distributors Corp. of Bethesda, Maryland. He is a commission salesman for commercial carpet products and floor coverings.

APPLICABLE LAW

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

> c. All casino service industries not included in subsection a. of this section shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino applicant or licensee or its employees or agents. Such casino service industries, whether or not directly related to gaming operations, shall include . . . maintenance companies . . . and construction companies . . . The commission may exempt any person or field of commerce from the licensing requirements of this subsection if the person or field of commerce demonstrates (1) that it is regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities, and (2) that licensing is not deemed necessary in order to protect the public interest or to accomplish the policies established by this act.[5]
>
> d. Licensure pursuant to subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act.

N.J.S.A. 5:12-86, Casino license-disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
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> . . . .
>
> e. The pursuit by the applicant or any person who is required to be qualified under this act as a condition of a casino license 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;

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

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

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

DISCUSSION

The Division contends that the petitioners' alleged systematic provision of free goods and services to persons who were in a position to award contracts or other benefits to Crown-NJ or to Floor Installers, Inc., their alleged creation of a sham joint venture in order to obtain subcontracts intended to be awared to minority-controlled businesses, and their alleged procurement of a fraudulent performance bond in connection with an Atlantic City casino hotel project reflects the pursuit of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, which constitutes a violation of section 86e, and that accordingly, they are disqualified from casino service industry licensure. The Division further contends, by means of N.J.A.C. 19:43-1.3(c), that the petitioners lack the necessary reputation for good character, honesty and integrity required for licensure.

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

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

Section 86e is one of three "inimical clauses" contained in section 86 of the Act. Section 86c(4) of the Act (now section 86c(2)) is more commonly referred to as the "inimical clause" and is the more widely discussed section as to the meaning of the phrase "inimical." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 254:

> 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.

After discussing the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act, the Commission discussed the section 86e inimical clause. The Commission stated that the same concept discussed regarding the section 86c(4) inimical clause plays a crucial role in the section 86e disqualification criteria. The Commission stated at pages 254 and 255:

> An Applicant also may be disqualified because either the Applicant itself or any person required to qualify pursued economic gain in an occupational manner or context which is in violation of the civil or criminal public policies of this State. The statute defines "occupational manner or context" as the "systematic planning, administration, management or execution of an activity for financial gain". Thus, an isolated or incidental transgression of civil or criminal public policy is not a disqualification under this section. Rather, there must appear a regular or ongoing scheme for financial gain which has as an integral component, repeated or continuing violations of the criminal or civil policies of this State.
>
> With regard to whether the civil or criminal public policy of this State is violated, there must be reliable proof in the record to support a finding that such policy exists and that it was routinely violated. Without limitation, these policies would include the

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> criminal laws and civil requirements, infractions of which would give rise to penalties or private causes of action at law. In this respect, one must be careful not to extend the New Jersey public policy to a jurisdiction where a different policy is in force. If no such policy was violated in the places where the pursuit of gain actually occurred, then it cannot be said that this disqualification criteria applies.
>
> Such pursuit of economic gain will disqualify a person under this standard only if that pursuit creates a reasonable belief that participation of such person in casino operations would be "inimical" to the policies of the Act or to legalized gaming. The analysis must be similar to that just described with regard to offenses "inimical to casino operations". Many factors, including the nature of the systematic pursuit of economic gain, the public policies violated, the circumstances surrounding the pursuit, the person's involvement in the pursuit, termination of the pursuit and remoteness of the pursuit in time, all must be assessed to determine whether public confidence in the regulatory process will be eroded or whether an enhanced danger of improper activity will result if the person is permitted to participate in legalized gaming.

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

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the petitioners' alleged systematic provision of free goods and services to persons who were in a position to award contracts or other benefits to Crown-NJ or to Floor Installers, Inc., their alleged creation of a sham joint venture in order to obtain subcontracts intended to be awarded to minority-controlled businesses, and their alleged procurement of a fraudulent performance bond in connection with an Atlantic City casino hotel project, reflect the pursuit of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State and thus constitutes a violation of section 86e, and that, accordingly, they are disqualified from casino service industry licensure.

With regard to the Greenblatt incident, the Division contends that the petitioners' actions are comparable to having committed commercial bribery, in violation of N.J.S.A. 2C:21-10.

N.J.S.A. 2C:21-10, Commercial bribery and breach of duty to act disinterestedly, provides in pertinent part:

> a. A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:
>
> (1) An agent, partner or employee of another;
>
> . . . .
>
> (2) An officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association;
>
> . . . .
>
> c. A person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.
>
> d. If the benefit offered, conferred, agreed to be conferred, solicited, accepted or agreed to be accepted in violation of this

> section is $75,000.00 or more, the offender is guilty of a crime of the second degree. If the benefit exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. If the benefit is $1,000.00 or less, the offender is guilty of a crime of the fourth degree.

In this case, Mr. Greenblatt was the owner's representative on the Logan Square project. He occupied a position of special trust vis-a-vis the owner that should have been kept free from the corrupting influence of bribery. Mr. Greenblatt was Mr. Keating's agent and employee, and thus he owed a duty to Mr. Keating to faithfully represent his interests in the project and ensure that subcontractors were performing properly under the terms of their contracts. Mr. Greenblatt knowingly violated this duty of fidelity. He approached Mr. Frank and solicited a position as a consultant or representative to ensure that Crown-NJ's subcontractors performed. Mr. Greenblatt then accepted $15,000 for performing his consulting services. Working as a consultant for a subcontractor (Crown-NJ) at the same time he was supposed to be overseeing Crown-NJ's performance on behalf of the general contractor is a conflict of interest. It is a conscious disregard of a known duty of fidelity, an act proscribed by N.J.S.A. 2C:21-10a.

As Mr. Greenblatt committed a violation of N.J.S.A. 2C:21-10a by soliciting and accepting a benefit for knowingly violating his duty of fidelity, Mr. Frank committed a violation of N.J.S.A. 2C:21-10c by agreeing to confer and then conferring the benefit upon Mr. Greenblatt. Pursuant to N.J.S.A. 2C:21-10d, both individuals committed a crime of the fourth degree.

The petitioners were not involved in the transaction between Messrs. Greenblatt and Frank.

Mr. Herwick did not work on the Logan Square project. Mr. Gill told Mr. Frank that he was opposed to hiring Mr. Greenblatt, since he believed it was a conflict of interest. All of the agreements were negotiated and signed by Mr. Frank. Mr. Herwick knew that Mr. Greenblatt had approached Mr. Frank about serving as Crown-NJ's representative or as a consultant on the project. Mr. Gill discussed Mr. Greenblatt's proposal with Mr. Herwick and both petitioners agreed that Crown-NJ should not accept the proposal. Mr. Herwick felt it was a conflict of interest and possibly illegal. Mr. Herwick told Mr. Frank of his concerns; however, Mr. Frank thought it was a "good deal" and decided to accept the offer. Mr. Frank indicated that he had consulted his son (who was the corporate counsel) and that his son had opined that the Greenblatt relationship

was legal. Finally, the check issued to Mr. Greenblatt for his services was issued by Crown-NJ out of its Ohio office. Neither Mr. Gill nor Mr. Herwick conferred, offered or agreed to confer any benefit upon Mr. Greenblatt. Any and all such activities were conducted directly between Messrs. Greenblatt and Frank. Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:21-10.

The Division further contends that the petitioners' alleged systematic provision of free goods and services to persons who were in a position to award contracts or other benefits to Crown-NJ or to Floor Installers, Inc., reflects the pursuit of economic gain in an occupational manner or context that is in violation of the criminal or civil public policies of this State. The petitioners performed these services as an accommodation to their customers. They took pride in their work, and when asked by a customer to perform some outside service, the petitioners would attempt to comply with the request. The petitioners were not interested in doing this type of work, but they did do a few jobs of this sort as accommodations. The petitioners usually did not perform these type of services themselves but would instead subcontract the job out to other companies.

Mr. Herwick had no involvement with the Victoria transaction. The installation was performed by another company that was paid by Crown-NJ. The company simply forgot to bill Mr. Victoria, since that job was not a part of their normal business. Mr. Victoria was eventually billed $1,066.81 in 1985 for this installation.

The Blackman transaction was similar. Upon being transferred, Mr. Blackman asked people he knew in the carpet industry if they could give him a good price on carpeting. Mr. Herwick contacted another company and subcontracted out the work. The subcontractor was paid and Mr. Blackman was billed; however, he did not pay his bill in a timely manner. He did not pay it until August 1987, after numerous collection attempts had been made by Crown-NJ.

Again, with Mr. McElfresh, a similar transaction occurred. Mr. McElfresh approached Mr. Herwick about installing carpet in Mr. McElfresh's home. As in the prior instances mentioned above, Crown-NJ subcontracted the work, this time to an individual named William Brennan. Mr. McElfresh was billed by Crown-NJ for the work in a timely manner; however, Mr. McElfresh did not pay Crown-NJ for the carpet installation in a

timely manner. Numerous phone calls were made to Mr. McElfresh by Crown-NJ in an effort to collect payment.

A similar situation occurred with Mr. Clause. Mr. Gill was asked by Mr. Clause to give him (Clause) a price on installing ceramic tile at his residence. Even though they did not do that type of work, since the Sands was a good customer Mr. Gill told Mr. Clause that he would take care of it. Floor Installers subcontracted the job to Edward A. Filling, Inc., because Floor Installers did not do ceramic work. On August 11, 1982, $3,300 in ceramic tile work was completed at Mr. Clause's personal residence. After completing the work, the Filling Company sent an invoice to Floor Installers and never paid for the tile work. Mr. Clause was not told the work would be performed for free; however, the work was performed just prior to Floor Installers' entering into Chapter 11. At that time, Floor Installers was in a state of disarray and was looking to collect on large obligations owed to it. They simply missed collecting on this small debt for work performed by another company.

The LeFevre incident also appears to be a mistake that was corrected. Mr. Herwick and Mr. LeFevre had become personal friends in Florida, and both men were hunters. When the Hilton Corporation was about to leave Atlantic City, Mr. Herwick decided to give Mr. LeFevre a rifle as a going away present. Mr. Herwick stated that this was a personal gift rather than a company gift and that the reimbursement had been incorrectly charged to the corporate entertainment account. The cost of the rifle should have been deducted from his year-end distribution of company profits. Upon learning of this discrepancy, Mr. Herwick immediately had the situation corrected. Within three weeks of the Herwick interview, the Division received a copy of a corrected Internal Revenue Service Form 1099 that had been issued to John Herwick for 1985. The corrected 1099 was in the amount of $1,213.42, exactly the amount of the cost of the rifle that was given to Mr. LeFevre.

Almost all of the above transactions were situations where the petitioners were floor covering installers on certain projects and were approached by other persons involved in the contract asking if they could purchase carpeting for themselves at a good rate. The services were not solicited for free. They were not sought as bribes to induce the awarding of a contract. All of the incidents occurred after contracts had already been awarded. The McElfresh incident is the only incident where there is an appearance of possible impropriety in the awarding of premium overtime; however, in that case all

subcontractors were awarded premium overtime in order that the project could be completed early and the general contractor could collect a sizable bonus. Thus, in that case, there was no impropriety. These services were not regularly performed by the petitioners. The services were simply provided as an accommodation to customers. The petitioners thought it was just good business practice. It is common for people to seek to purchase goods from people they already know. The Division has not established a "systematic planning" to provide free goods and services for a financial gain. There has also been no showing that a civil or criminal public policy of the State was violated. Further, there is no reliable proof in the record to support a finding that such a policy exists and that it was routinely violated. There has been no showing that either the criminal laws were violated or that civil requirements, infractions of which would give rise to penalties or private causes of action at law, were violated. There has been no showing that the petitioners' conduct creates a reasonable belief that their participation in casino operations would be inimical to casino operations.

The alleged sham joint venture, however, is another matter. If the joint venture was in fact a sham organized solely to illegally obtain minority set-aside contracts, and the petitioners organized or controlled the sham joint venture, then that would be a significant violation of public policy. The Casino Control Act (at N.J.S.A. 5:12-184 et seq.) specifically provides for minority set-aside contracts in the casino industry. To attempt to violate these provisions by establishing a sham minority business in order to obtain minority set aside contracts is the pursuit of economic gain in an occupational manner or context, an act which is in violation of the civil or criminal public policies of this State. Such a violation would create a reasonable belief that the participation of such person in casino operations would be inimical to casino operations. Such activity would substantially erode public confidence in the regulatory process and cannot be either condoned or tolerated in this State.

In 1984, Mr. Miller approached Mr. Frank on several occasions about creating a joint venture to provide cleaning services. The petitioners discussed the matter with Messrs. Frank and Sukenik; however, they merely acted as advisors and did not negotiate, prepare, draft or sign the joint venture agreement.

The joint venture was officially established on November 15, 1984, when Miller and Herman Frank executed a "Joint Venture Agreement" that had been drafted by Irwin Frank, son of Herman Frank and an Ohio attorney. Miller testified that he was to be the

majority owner of the joint venture. On a disclosure affidavit filed in 1985 with the Minority Entrepreneurship Development Corporation, Eagle Cleaning Systems is listed as a 55-percent owner of the joint venture and Crown-NJ is listed as a 45-percent owner thereof.

The joint venture was formed to bid on minority set-aside contracts. In 1984, the joint venture bid on, and was awarded, a subcontract at the Hilton project. On the Hilton project, Mr. Miller was supposed to apprentice, since it was his first job and he was just learning the business. As such, Crown-NJ installed all of the floor covering and Eagle Cleaning Systems performed all of the post-installation cleaning at the site.

Mr. Miller did not exercise control over the floor covering portion of the contract. Mr. Miller did very little on the project and was never available. The petitioners made numerous attempts to involve Mr. Miller in the project; however, he was never available. Meetings would be scheduled, and he would not attend. He would not showup on the job site. The petitioners would even go to Mr. Miller's house in an attempt to find him, with very little success. As a result of Mr. Miller's uncooperative attitude, Crown-NJ had to complete most of the work. Mr. Miller supervised all cleaning services and did some payroll work for the joint venture.

Mr. Miller provided two interviews with the Division. The transcripts of those interviews are in evidence (R-1 & R-2). In those interviews, Mr. Miller stated that the petitioners never intended his company to participate in a meaningful way in the contract. He stated that the joint venture was a front used by the petitioners to obtain minority set-aside contracts and that Eagle Cleaning was not expected to perform any work for the joint venture. For the reasons stated above, I do not accept Mr. Miller's statements, and, as indicated by Judge Holmes, Mr. Miller's statements appear to be motivated by revenge.

The petitioners did not solicit the joint venture; Mr. Miller did. The petitioners did not negotiate, prepare, draft or sign the joint venture; Mr. Frank did. The petitioners were not owners of the company establishing the joint venture; Messrs. Frank, Sukenik and Miller were. The petitioners were merely employees of the company. As employees, they attempted to involve Mr. Miller in the business. Mr. Miller, however, was uncooperative and was willing to let others do the work and use his name while he collected a portion of the profits. I concur with Judge Holmes that there was a sham joint venture in this case; however, the petitioners did not participate in creating or overseeing

the sham. Messrs. Miller, Frank and Sukenik should be held accountable for this action and disqualified from participating in casino operations; not Messrs. Gill and Herwick.

With regard to the fraudulent performance bond, an argument can be made that the petitioners should have known that the validity of the bond was suspect from the circumstances surrounding the transaction. On the other hand, the petitioners had never previously obtained such a bond. When they experienced difficulty in obtaining a bond, they were referred by a representative of the general contractor to a specific individual, Mr. Rilley, who was familiar with procedures to obtain bonds for companies that were having difficulty securing bonds. Mr. Rilley knew of a bonding company that took high risks. In an attempt to verify the legitimacy of the bonding company, Mr. Herwick called the telephone number listed on the letterhead of Industrial Indemnity Co., N.A., in Philadelphia and the telephone was answered in the company's name. The petitioners provided the bond contract to Tishman, a large national construction company headquartered in New York. Tishman forwarded the contract to their insurance and legal offices for approval. Approximately two weeks later, Tishman notified Floor Installers that the bond was acceptable.

During an interview with the Division, Mr. Fineman admitted that the bonds that he provided were fraudulent and worthless. Fineman stated that he attracted customers whose financial instability had prevented them from securing a bond through legitimate channels. Fineman would claim to be an agent of a legitimate bonding company but would, when writing the bond, change the name of the legitimate company by adding the initials "NA" to the lawful company's name. The initials "NA" stand for Netherlands Antilles, and by adding them, Fineman stated, he was able to avoid allegations that he was fraudulently misrepresenting the legitimate bonding company. In this way, a general contractor who examined Fineman's bond by looking in Best's Guide of Insurance Companies would see the name of a legitimate company and would conclude that the bond was proper. Mr. Fineman made a business of providing fraudulent performance bonds and deceiving major construction companies, such as Tishman, that have their own legal departments. It is no wonder that he could deceive a small business such as Floor Installers which, in 1980, was experiencing financial difficulties.

Again applying the standards established by the Commission in the Resorts decision, the Division has failed to establish that the petitioners were engaged in a systematic management of activity for financial gain in violation of the civil or criminal

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public policies of this State. The Commission stated that "an isolated or incidental transgression of civil or criminal public policy is not a disqualification under this section. Rather, there must appear a regular or ongoing scheme for financial gain which has as an integral component, repeated or continuing violations of the criminal or civil policies of this State." Resorts at 254-55. This was an isolated incident, not a continuing course of conduct. This was the first and only time the petitioners were required to provide a performance bond. Additionally, if the petitioners had knowingly obtained the fraudulent performance bond with the intent to deceive Tishman, then a violation of the civil public policies of this State would exist; however, it appears in this case that the petitioners were duped. Even though they had some suspicions regarding Mr. Fineman, their attempts to determine his company's legitimacy and their reliance on Tishman's legal department's review was reasonable. In addition, it was an agent of Tishman that referred the petitioners to Mr. Rilley, who then contacted Mr. Fineman. As a result, one cannot say that the petitioners knowingly obtained the performance bond with the intent to deceive Tishman.

Recently, in Division of Gaming Enforcement, Dept. of Law and Public Safety v. Michael P. Waters, OAL DKT. CCC 3933-86 (Jan. 7, 1987), mod., Casino Control Commission (June 12, 1987), the Commission stated (at 2) that:

> A distinction must be drawn between rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-RA-85 (Commission order May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision December 27,

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1985); State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987).

The Commission concluded that if the Division establishes a case for disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted" (at 3).

In the Davis case, the Commission stated (at 313-14):

> Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitation provisions apply only to "...a conviction of any of the offenses enumerated in this act as disqualification criteria." Nevertheless, many of the factors that are considered upon a claim of rehabilitation are included within the inimical analysis.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not inimical under section 86(c)(4). Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4). [Id. at 314]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the applicant's position or the registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;

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

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

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

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

First, the petitioners are applicants for qualification as employees of a casino service industry. They desire to work in the floor covering industry and to be able to work for companies that install and repair carpeting in casino hotels. As such, they will have no direct responsibilities for actual gaming activity and minimal, if any, contact with casino patrons.

Second, I found that they did not commit any criminal offense. The Division's allegations concern questionable buisness practices allegedly committed by the petitioners. The petitioners' conduct in these allegations was not serious enough to warrant disqualification and the Division failed to establish that any civil or criminal violations of public policy had been committed by the petitioners.

Third, the circumstances surrounding each incident are discussed above in this discussion.

Fourth, the alleged misconduct with regard to the fraudulent performance bond occurred in 1980, the alleged misconduct regarding Mr. Clause occurred in 1982, and the remaining alleged misconduct occurred in 1984 and 1985. No allegations of misconduct occurring after 1985 were made by the Division.

Fifth, Mr. Gill was 34 years of age when the alleged misconduct began and 39 years of age when the alleged misconduct ended. Mr. Herwick was 38 years of age when the alleged misconduct began and 43 years of age when the alleged misconduct ended.

Sixth, neither petitioner has ever committed a violation of the criminal laws. The Division alleges that the alleged questionable business practices evidence a systematic management of a business pursuing an economic gain in an occupational manner, an act which is in violation of the civil or criminal policies of this State. As indicated above, I did not so find.

Seventh, no social conditions contributed to the alleged misconduct; however, the companies' business activity (or lack thereof) and financial situations, particularly that of Floor Installers, contributed to their course of conduct.

Eighth, both petitioners are college graduates, businessmen and family men. They had both been active in their communities and are now trying to re-establish their lives; however, both are virtually barred from working in their chosen vocation in the local area due to the cloud hanging over their heads that these proceedings have caused.

When considering the petitioners' conduct as taken in context and the overall nature of their characters, I do not find that the petitioners pursued economic gain in an occupational manner or context that is in violation of the civil or criminal public policies of this State, and that the Division has failed to establish a reasonable belief that the petitioners' participation in casino operations would be inimical to casino operations and to the policies of the Casino Control Act.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the casino service industry licensure, registration or qualification of the petitioners would be inimical to the policies of the Act, pursuant to section 86e.

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

As indicated above, the petitioners are required to establish their individual good character, honesty and integrity. Companies applying for casino service industry licensure are also required to establish their good character, honesty and integrity. It is well-settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 31 L. Ed. 2d 796, 92 S. Ct. 1500 (1972). Therefore, the fitness of any applicant business entity

must be evaluated, in part, upon John J. Gill's and John S. Herwick's character, honesty and integrity if the petitioners act as owners, officers or sales representatives of the applicant business entity.

Under N.J.A.C. 19:43-1.3(c), the petitioners were required to establish, by clear and convincing evidence, their reputation for good character, honesty and integrity. This standard is identical to the standard in section 89b(2) of the Act for the licensing of casino key employees. The Commission has had occasion to interpret this standard as contained in section 89b(2). In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979), the Commission held that an unfavorable reputation, although it raises questions that must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-98 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 296.

The Division's original objection to the good character, honesty and integrity of Baumgardner Construction Company centers around the conduct of petitioners, who were sales representatives for Baumgardner. N.J.A.C. 19:43-1.14(a)2ix provides that no casino service industry license shall be issued pursuant to section 92c unless "each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees" establishes his qualifications under the Act and regulations of the Commission. While no longer employed by Baumgardner, the petitioners still desire to be sales representatives for floor covering businesses that may do business with the casino industry. As such, the Commission has afforded them this opportunity to establish their qualifications and their good character, honesty and integrity.

John J. Gill is 42 years old. He has been married for 20 years, has three children, ages 16, 17, and 19, and provides a home for a 19-year-old homeless youth. Mr. Gill is practicing Roman Catholic. He was raised through the Catholic school system and graduated from St. Joseph's University with a B.S. degree in English with a minor in philosophy. Mr. Gill has been active in the Boy Scouts, little league, Knights of Columbus, Kiwanis Club, the Pleasantville Businessmen's Association, and the Men of Malvery (a retreat group). Mr. Gill has also contributed to his church, schools and other charitable organizations. He has donated both services and materials to various organizations, including donating carpet removed from various projects to schools.

John S. Herwick is 46 years old. He has been married for 24 years and has an 18-year-old son who is attending Valley Forge Military Academy Junior College. He has been active in the Pleasantville Businessmen's Association, the Mainland Kiwanis, the 1984 U.S. Olympic Committee Dinner Committee, the El Paso Jaycees, Boy Scouts, Y.M.C.A., and has coached and umpired in both little league and Babe Ruth league. He graduated high school from the Valley Forge Military Academy, and graduated from the Pennsylvania Military College in 1965 with a degree in English. He has been an active member of the Holy Trinity Episcopal Church of Ocean City and the Valley Forge Military Academy Alumni Association. He has volunteered to serve on several committees for the Academy. From 1962 until 1968, Mr. Herwick was in the Marine Reserve. He attained the rank of E-4 and was separated with an Honorable Discharge. He was awarded the Good Conduct Medal and the Marine Corps Reserve Medal.

Both men's work records are detailed above. They appear to be hardworking small-businessmen and good family men. They are persons of good character, honesty and integrity. Accordingly, the petitioners present no risk to the public or to the integrity of the gaming industry in this State in the position applied for. They have earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. John J. Gill and Mr. John S. Herwick are persons of good character, honesty and integrity, and are suitable for licensure in this State as sales representatives for a casino service industry. See, Boardwalk Regency Corp.

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

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DISPOSITION

It is **ORDERED** that the applications of John J. Gill and John S. Herwick for qualification as casino service industry employees be **GRANTED.**

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

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

March 17, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

3/20/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 21 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioners:

P-1 Letter of Christer Lindkrantz, vice-president of hotel operations, Tropicana Hotel and Casino, dated March 30, 1988

P-2 Letter of Cliff Lucas, vice-president of operations, Perini Corporation, dated April 6, 1988

P-3 Letter of Charles Totoro, director of engineering, Tropicana Hotel and Casino, dated March 25, 1988

P-4 Letter of Nikki M. Jones, executive vice-president and chief operating officer of Atlandia Design, dated April 7, 1988

P-5 Letter of Kitty Lloyd, shift manager, engineering department, Tropicana Hotel and Casino, dated March 29, 1988

P-6 Letter of Emil J. Neumann, director of facilities, engineering and maintenance, Trump Plaza Hotel and Casino, dated April 4, 1988

P-7 Letter of Russell E. Preston, manager of safety, Perini Corporation, dated April 4, 1988

P-8 Letter of Gerald P. Johnson, project manager, Perini Corporation, dated August 10, 1988

P-9 Letter of Wayne T. Weingartner, project controller, Perini Corporation, dated April 1, 1988

P-10 Letter of C.B. Danner, director of special projects, Tropicana Hotel and Casino, dated May 4, 1988

P-11 Letter of John S. Herwick to Chairman Read, dated February 23, 1988

P-12 Letter of John S. Herwick to the Division, dated March 19, 1988

For the Respondent:

R-1 Deposition of George F. Miller given to the Division, December 11, 1986

R-2 Deposition of George F. Miller given to the Division, March 2, 1987

R-3 Initial Decision of Edgar R. Holmes, ALJ. in Eagle Cleaning Systems, OAL DKT. CCC 1276-88, (Oct. 20, 1988)

R-4 Order of the Commission in Eagle Cleaning Systems, OAL DKT. 1276-88 (Dec. 27, 1988)

R-5 Eagle-Crown Carpet Joint Venture, dated November 15, 1984

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R-6 Deposition of John J. Gill given to the Division, March 5, 1987

R-7 Deposition of John S. Herwick given to the Division, March 5, 1987

R-8 New Jersey Housing and Mortgage Finance Agency Contract Compliance Program

Allied Papers:

Division's letter of objection to the licensure of Crown-NJ as a casino service industry, dated July 27, 1987

WITNESSES

For the Petitioners:

James Price
John J. Gill, petitioner
Father John C. Killeen
John S. Herwick, petitioner

For the Respondent:

Agent Deborah Grusemeyer (a.k.a. McCloughan), Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-369; 88-EA-116
REGISTRATION NO. 79459-40
APPLICATION NO. 71056-22
OAL DOCKET NOS. CCC 4055-88;
CCC 907-88
ORDER NO. 89-9-11

APPLICATION OF MARIE E. GITTONE	:	
AND	:	
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
MARIE E. GITTONE,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 28th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application for a casino employee license is denied substantially for the reasons

stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the complaint for revocation of the respondent's casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent is permitted to retain her casino hotel employee registration and she remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and N.J.S.A. 5:12-91; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 0907-88 and
CCC 4055-88
AGENCY DKT. NOS. 88-EA-116 and
88-369 (On Consolidation)

MARIE E. GITTONE,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Vincent J. Sgro, Esq., for the petitioner (Sgro and Hill, attorneys)

R. Lane Stebbins, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 15, 1988 Decided: January 18, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, alleges that petitioner, Marie E. Gittone, is statutorily disqualified from holding casino hotel registration no. 79459-40 by virtue of her plea of guilty to official misconduct, second degree, in violation of N.J.S.A. 2C:30-2a, and theft by unlawful disposition, third degree, in violation of N.J.S.A. 2C:20-9. The Division also opposes petitioner's application for casino licensure based upon the statutory disqualification and the allegation that petitioner does not possess the requisite good

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character, honesty and integrity pursuant to section 89b(2) of the Casino Control Act (Act) as incorporated withinsection 90b of the Act. The petitioner asserts rehabilitation pursuant to section 90h and/or 91d.

PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) on December 18, 1987. The petitioner requested a hearing on January 27, 1988. On February 1, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On May 18, 1988, the Division filed a complaint with the Commission seeking the revocation of the petitioner's casino hotel registration. A prehearing conference was held before the Honorable Lillard E. Law on April 19, 1988 and the matter was scheduled for hearing on July 18, 1988 before the Honorable Jeff Masin. The matter was adjourned and an Order of Consolidation was entered on June 23, 1988. The matter was thereafter scheduled before Administrative Law Judge Masin on December 1, 1988 at the Absecon Municipal Complex, Absecon, New Jersey. On November 29, 1988, the within matter was transferred to the undersigned. The hearing was held as scheduled, however, the record remained open until December 15, 1988, to allow petitioner to submit additional documentation.

ISSUES

A. Whether petitioner was convicted of crimes listed as statutory disqualifiers in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:30-2a, official misconduct, and N.J.S.A. 2C:20-9, theft by unlawful disposition.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to sections 90h and/or 91b of the Act.

FINDINGS OF FACT

The facts in this matter are totally uncontroverted.

In June 1983, Marie E. Gittone was employed as the recreation leader for the Senior Citizens Center by the City of Vineland. In addition to being responsible for the financial activities of the Senior Center, Ms. Gittone arranged trips and social outings for the benefit of the senior citizens. Between June 1983 and February 1984 Ms. Gittone received various amounts of money from senior citizens for the trips. However, during that period, approximately $24,000 was diverted to Ms. Gittone's own personal account. Ms. Gittone also issued a number of bad checks between December 1983 and January 1984.

On February 14, 1985, an accusation was filed against Ms. Gittone in the Cumberland County Superior Court. The accusation charged Ms. Gittone with official misconduct (second degree) in violation of N.J.S.A. 2C:30-2 a and b; theft by unlawful disposition (third degree) in violation of N.J.S.A. 2C:20-9, and with issuing bad checks in violation of N.J.S.A. 2C:21-5. On that date, Ms. Gittone pled guilty to all three counts of the accusations. On April 12, 1985, Ms. Gittone was sentenced to five years' probation, 60 days in jail, 200 hours of community service and was ordered to pay restitution in the amount of $24,265.

Ms. Gittone divided her court-ordered 200 hours of community service requirement between working at the intensive care unit at Newcomb Hospital in Vineland, New Jersey, and teaching in the Adult Literacy Program of the Vineland Board of Education. Although she satisfied her community service requirements, Ms. Gittone has been voluntarily tutoring an illiterate cook at the Showboat Casino Hotel, where she has been working since October 1987, in order that he may obtain a driver's license.

The court-ordered restitution was paid in May 1985 and an Order of Satisfaction was entered by the Honorable Isaac I. Serata on June 18, 1985 (P-1). In addition, Ms. Gittone was granted an early release from probation on September 4, 1987, since she had satisfactorily complied with all of the conditions of her probation (P-8).

It would appear at first blush that Ms. Gittone committed egregious acts by

defrauding many senior citizens. Although the gravity of the offenses must not be diminished, based upon the uncontroverted testimony of Ms. Gittone, a somewhat different picture of her emerges — that of a committed, compassionate individual who cared deeply about her seniors; who tried to provide low-cost trips for all seniors (even those who could not afford them); who started borrowing money from future planned trips to pay for current trips; who was financially so far behind and in desperation gambled and lost between $6,000 and $8,000 at Atlantic City casinos in an attempt to balance her accounts. There is no dispute that Ms. Gittone did not personally benefit from the $24,000 she diverted. Rather, the monies were diverted in an effort to keep a financial house of cards from tumbling down. Ms. Gittone's attempts to keep the price of the trips affordable to the seniors and her attempts to include the less fortunate in the Center's recreational activities led to calamitous financial results. However well-meaning her intentions were, Ms. Gittone was engaged in comitting serious criminal acts.

In October 1987, Ms. Gittone began working as a supervisor of three food outlets at the Showboat Casino Hotel. She has received high performance evaluations from her supervisors (P-4). On November 23, 1987, Ms. Gittone received a certificate of achievement for completing a supervisory skills training program at the Showboat Casino Hotel (P-3). She is presently enrolled and attending an "Introduction to Computers" course in the Vineland Adult Education class (P-5).

Ms. Gittone was characterized by Dr. S. Donald Babcock as having an excellent reputation for good character, honesty and integrity. Dr. Babcock also testified as an expert witness (P-6) that Marie E. Gittone showed no signs of a compulsive gambling disorder. He testified credibly that her sole motivation for gambling was to attempt to recover the money.

The above is believable, uncontroverted and is **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which would be under New Jersey law at the time of application a violation of any of the following provisions in regard to Title 2C of the New Jersey statutes be disqualified

from licensure. The Division contends that the petitioner's conviction on February 14, 1985, for violations of N.J.S.A. 2C:30-2a, official misconduct, second degree, and of N.J.S.A. 2C:20-9, theft by unlawful disposition, third degree, are statutory disqualifiers listed under section 86c(1) of the Act. I agree.

Therefore, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that petitioner's convictions for violations of N.J.S.A. 2C:30-2a and N.J.S.A. 2C:20-9 disqualify her from being a registrant and a licensee, pursuant to section 86c(1).

(B) N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91b; N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Ms. Gittone supervises and manages three food outlets within the Showboat Casino Hotel. As such, she has limited contact with the patrons of the casino. In addition, the petitioner has applied for casino licensure. As such, she would have

substantial contact with patrons of the casino.

Second, the petitioner was convicted on February 14, 1985, of violations of N.J.S.A. 2C:30-2a, official misconduct, second degree, and N.J.S.A. 2C:20-9, theft by deception, third degree. Under section 86c(1) of the Act, both are statutory disqualifiers. Given the circumstances involving breach of the public trust, they were extremely serious offenses.

Third, it is apparent that petitioner knew that her actions in 1983-1984 were illegal. However, there have been no other recurrences of criminal behavior.

Fourth, petitioner's criminal offenses occurred approximately five years ago. Petitioner's probation terminated early on September 4, 1987 (P-8). There were no problems with her probation.

Fifth, the petitioner committed the offenses at age 35. It is unlikely that her misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved the commission of offenses in 1983-1984. Prior to that, petitioner had not been involved in the criminal justice system. However, there was apparently a pattern of misconduct in 1983-1984.

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

Eighth, the evidence provided by the petitioner in support of her claim of rehabilitation is sufficient to overcome her disqualification with regard to her casino employee hotel registration. The evidence of the petitioner's rehabilitation included: her positive employment record in the casino industry, documents establishing her satisfactory completion of the probationary term imposed for the criminal violations, the petitioner's community service which was a condition of her probation, documents establishing that the court-ordered restitution was paid, and petitioner's own testimony acknowledging her past misconduct and indications that she had learned her lesson. However, an applicant for casino licensure undergoes increased scrutiny when being assessed as to rehabilitation. Ms. Gittone's willful and knowing breach of the public trust combined with the serious nature of Ms. Gittone's criminal acts inveigh against a finding of rehabilitation with regard to her application for casino licensure.

After considering all of the factors listed in N.J.S.A 5:12-91d and/or N.J.S.A. 5:12-90h, including petitioner's work record and the positions applied for, I **CONCLUDE** that with regard to petitioner's casino employee hotel registration that petitioner has established, by clear and convincing evidence, her rehabilitation pursuant to N.J.S.A. 5:12-91d. However, I further **CONCLUDE** that with regard to the casino employee licensure, the petitioner has not established by clear and convincing evidence her rehabilitation pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2) as incorporated within section 90b, Ms. Gittone is required to demonstrate by clear and convincing evidence her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission DKT. 79-CL-1 (February 26, 1979) at 8. In Resorts, the Commission held that the individual's actual character and attributes of good character, honesty and integrity are the key.

Although Dr. Babcock testified as to Ms. Gittone's good character, honesty and integrity, the proofs as to these attributes were far from overwhelming. Although it appears that Ms. Gittone is sincere to her commitment to abstain from further criminal conduct, the paucity of the character evidence leads me to **CONCLUDE** that Marie E. Gittone has failed to establish by clear and convincing evidence that she possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the application of Marie E. Gittone for casino employee licensure be **DENIED**. It is further **ORDERED** that the complaint filed by the Division of Gaming Enforcement seeking revocation of petitioner's casino hotel employee registration be **DISMISSED**.

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

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

1-19-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

11/15/89
DATE

Marianne Farone
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 23 1989
DATE

Ronald L. Plechner
OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

For the petitioner:

Marie E. Gittone
Dr. Samuel Donald Babcock, Jr.

For the respondent:

None

EXHIBITS LIST

For the petitioner:

P-1 Superior Court, Law Division, Order of Release, dated June 18, 1985
P-2 Letter dated April 22, 1988, from Craig L. Adams, probation officer
P-3 Certificate of Achievement, dated November 23, 1987, from Showboat Casino Hotel
P-4 Showboat Casino Employee Performance Appraisal, dated October 14, 1988
P-5 Adult Education Registration Receipt, dated September 26, 1988 and American Heart Association Cardiopulmonary Resuscitation Card, dated September 15, 1988
P-6 Curriculum Vitae, Dr. Samuel Donald Babcock, Jr.
P-7 Dr. S. Donald Babcock, Recommendation for Marie Gittone, dated June 7, 1988
P-8 Notice of termination of probation

For the respondent:

R-1 Superior Court of New Jersey, Accusation No. A-0115-2-85
R-2 Judgment of Conviction and Order of Commitment, dated April 12, 1985
R-3 Stenographic Transcript of Sentencing, dated April 12, 1985
R-4 Stenographic Transcript of Retraxit Plea, dated February 14, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-291
OAL DOCKET NO. CCC 2771-87
ORDER NO. 89-2-15

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	INTERIM ORDER
v.	:	
GNOC CORP., t/a GOLDEN NUGGET HOTEL AND CASINO,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge, incorporating a Stipulation of Facts entered into by GNOC Corp. and the Division of Gaming Enforcement (Division), having been filed with the New Jersey Casino Control Commission; and exceptions and replies thereto having been filed; and the Commission having considered the matter at its public meeting of December 7, 1988, at which time the Commission reserved decision and required the parties to submit briefs on the applicability of N.J.S.A. 5:12-70(o) and 100(e); and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989;

IT IS on this 10th day of February 1989, ORDERED that the findings that GNOC violated N.J.S.A. 5:12-101(a)(1)

and (a)(2), -101(c) and -104(a)(1), are rejected for the reasons stated by the Chair on the record at the meeting of January 11, 1989; and

IT IS FURTHER ORDERED, that the findings of the ALJ with respect to the violations of N.J.A.C. 19:45-1.2(c)(3) are affirmed and adopted essentially for the reasons stated by the ALJ, except as to penalty which will be considered after remand; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for an expedited hearing for the limited purpose of addressing the issue regarding N.J.S.A. 5:12-100(e) as identified by the Commission in State v. Boardwalk Regency Corporation, t/a Caesars Atlantic City, Docket Nos. 87-290 and 88-147; and

IT IS FURTHER ORDERED that the initial decision is modified to delete the reference to GNOC as being a holder of a temporary casino permit.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-291
OAL DOCKET NO. CCC 2771-87
ORDER NO. 89-8-24(b)

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	SECOND INTERIM ORDER
v.	:	
GNOC CORP., t/a GOLDEN NUGGET HOTEL AND CASINO,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge, incorporating a Stipulation of Facts entered into by GNOC Corp. and the Division of Gaming Enforcement (Division), having been filed with the New Jersey Casino Control Commission; and exceptions and replies thereto having been filed; and the Commission having considered the matter at its public meeting of December 7, 1988, at which time the Commission reserved decision and required the parties to submit briefs on the applicability of N.J.S.A. 5:12-70(o) and 100(e); and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989, and, as set forth in its Interim Order No. 89-2-15, dated February 10, 1989, having remanded the matter to the OAL for the purpose of conducting

a hearing as to whether N.J.S.A. 5:12-100(e) and the corresponding regulations had been violated; and the Division having requested the Commission to reconsider the decision remanding the case for the purpose of having the Commission conduct the hearing directly; and the Commission having considered the Division's request, and GNOC's response thereto at the public meeting of February 22, 1989;

IT IS on this 20th day of March 1989, ORDERED, that the request of the Division is denied and the matter is remanded to the OAL for the purpose of conducting a hearing as set in Order No. 89-2-15, and

IT IS FURTHER ORDERED that, consistent with prior Commission rulings on all other aspects of this case, the OAL shall reassess and reevaluate the penalties previously recommended in the initial decision dated October 3, 1988, which reevaluation shall include, inter alia, a consideration of the criteria in N.J.S.A. 5:12-130 and of the relevancy of factors analogous to those detailed in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2771-87
AGENCY DKT. NO. 87-291

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GNOC CORP.,
t/a GOLDEN NUGGET HOTEL AND CASINO,
Respondent.

Joseph M. Nardi, III, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Martin L. Greenberg, Esq., for respondent (Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau & Falkin, attorneys)

Record Closed: May 27, 1988 Decided: October 3, 1988

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on February 19, 1987, charging the respondent with various violations of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and regulations adopted under the act (N.J.A.C. 19:45-1.1 et seq.). The charges arise from the respondent's issuance of cash payments to patron Antonio Chan on five occasions between September 28, 1985, and November 30, 1986. These are the issues:

1. Has the respondent violated N.J.A.C. 19:45-1.2(c)3 by recording cash payments to the patron without maintaining detailed, supporting, and subsidiary records to support the accumulation of the costs of the complimentaries provided to the patron.

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2. Has the respondent violated N.J.A.C. 19:45-1.2(c)3 by failing to submit to the Division a record of the costs of the complimentaries provided to the patron in the respondent's "daily comp. receiver report" on May 14 and November 30, 1986.

3. Has the respondent violated N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a) because the cash complimentary funds used in the patron's redemption transactions provided the patron with credit or an advance of something of value to enable the patron to engage in gaming activity as a player; because the cash complimentary funds used in the patron's redemption transactions represented a release or discharge of the patron's debts to the casino; and because the cash complimentary funds allowed the patron to redeem counter checks by exchanging cash or chips in an amount less than the amount for which the checks were drawn.

4. Has the respondent violated N.J.S.A. 5:12-104a(1) by entering into an agreement with a patron which provided for the payment of an amount which represented a percentage of the patron's net gaming losses.

The foregoing is a clarified restatement of the issues identified during a telephone prehearing conference in this matter conducted by Administrative Law Judge Beatrice S. Tylutki on June 29, 1987. Also identified as an issue at that time was whether cash complimentaries were permissible pursuant to the Casino Control Act and regulations, and, if so, under what conditions were they allowable. However, section 102m of the Casino Control Act was amended effective January 14, 1988 (P.L. 1987, Chapter 426), to prohibit most cash complimentaries. The Division did not allege in its complaint that the mere giving of a cash complimentary by the respondent constituted a violation. Rather, as can be seen above, the Division alleged violations surrounding the cash payments. Since resolution of the general question concerning the permissibility of cash complimentaries was neither material nor helpful, it was removed as an issue during a telephone status conference conducted by the undersigned on March 22, 1988.

PROCEDURAL HISTORY

The Division's complaint was filed with the Casino Control Commission on February 19, 1987. On April 10, 1987, the respondent filed with the Commission its notice of defense and statement of request for hearing. The Commission transmitted the matter to the Office of Administrative Law on April 27, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

As noted previously, Administrative Law Judge Tylutki conducted a telephone prehearing conference on June 29, 1987. At that time, she scheduled the hearing in this matter to commence before her on October 5, 1987. However, as a result of a telephone conference conducted by Judge Tylutki on September 28, 1987, the parties agreed that the matter should be placed on the inactive list until the end of January 1988, in order to provide additional time for discovery and for the discussion of a possible settlement. The matter was subsequently placed on the inactive list by order dated October 7, 1987. This order also provided that the matter would subsequently be scheduled for hearing commencing on February 1, 1988.

On or about January 27, 1988, Judge Tylutki was informed that the parties had reached a settlement agreement and would be submitting a stipulation of settlement. Therefore, the hearing scheduled to commence on February 1, 1988, was adjourned. However, the parties were unable to reach a settlement agreement. By letter dated February 10, 1988, Judge Tylutki informed the parties that she had arranged with the Clerk of the Office of Administrative Law to have the matter transferred for hearing by the undersigned commencing on April 4, 1988.

In order to permit the parties sufficient time to complete a stipulation of facts, the start of the hearing was delayed for one day. The matter was then heard as scheduled on April 5, 1988. The record remained open following the hearing to permit post-hearing submissions. Shortly before the hearing date, on March 31, 1988, the respondent had submitted a motion for partial summary decision. Because the Division did not have an opportunity to respond to this motion prior to the hearing, it was deemed untimely and the brief in support of the motion was considered as a trial brief. The Division's post-hearing brief was filed on May 9, 1988. The respondent's post-hearing brief was filed on May 27, 1988, and the record closed on that date.

FINDINGS OF FACT

A. STIPULATION OF FACTS

The material facts in this matter are undisputed. The parties have agreed to a comprehensive stipulation of facts, which was admitted into evidence as exhibit J-1. Pursuant to this agreement, the following facts have been stipulated:

1. Respondent, GNOC, Corp. (hereinafter called "GNOC") owns and operates the casino hotel formerly known as the Golden Nugget Hotel and Casino. GNOC was at all times referenced herein a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. At all times referenced herein, GNOC was the holder of a plenary casino license issued to it by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Act and Commission regulations promulgated thereunder. Said licensure was issued to GNOC effective May 1, 1984, and GNOC was conducting its casino hotel operation pursuant to said license at all times referenced herein.

3. At all times referenced herein, GNOC was the holder of, and operated pursuant to, a Certificate of Operation effective May 1, 1984 at which time GNOC was the holder of a temporary casino permit. GNOC conducted its casino operations pursuant to said Certificate of Operation at all times referenced herein. Said Certificate of Operation entitled GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder.

4. GNOC is the successor in interest to GNAC Corp. t/a The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded GNAC's interest as casino licensee as of May 1, 1984.

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5. On April 12, 1981, GNOC initially granted patron Antonio Chan a credit account at GNOC. The initial authorized credit limit granted Mr. Chan was $200,000. On February 9, 1986, GNOC authorized an increase to Mr. Chan's credit account to $400,000. Neither the granting of the account nor its authorized limit is at issue in the instant matter. A copy of patron Chan's credit application is attached hereto as Joint Exhibit A.

6. On February 19, 1987, the Division of Gaming Enforcement (hereinafter "Division") filed the instant complaint against GNOC.

7. During the period from September 28, 1985 through November 30, 1986 GNOC personnel recorded cash payments from the casino cage in the total amount of $117,600 to patron Chan. The dates the cash payments were made and the amounts of the payments are listed as follows:

1.	September 28, 1985	$12,600
2.	February 1, 1986	$25,200
3.	May 14, 1986	$29,400
4.	August 17, 1986	$25,200
5.	November 30, 1986	$25,200

8. Contemporaneous with the issuance of the 5 payments referenced in paragraph 7, supra., GNOC Cage Personnel prepared and maintained the following documents: GNOC Guest Complimentary slips, GNOC Miscellaneous Disbursement vouchers, and GNOC Miscellaneous Disbursement Logs, copies of which are attached hereto as Joint Exhibits B through L. Each of these documents carried the notation "cash comp." On the Miscellaneous Disbursement Voucher dated May 14, 1986, which is attached hereto as Joint Exhibit G, patron Chan wrote "Plane Tickets." The Miscellaneous Disbursement Voucher dated August 17, 1986, which is attached hereto as Joint Exhibit I contains the notation "Phillippines - A.C.". The accuracy of the amounts paid to the patron and the fact that Antonio Chan received the payments are not at issue in the instant matter.

9. Patron Antonio Chan was under no obligation to repay the $117,600 cash given to him by GNOC and recorded as cash comps, as described in paragraphs 7 and 8, supra.

10. The $12,600 cash payment to patron Chan on September 28, 1985 was reported on GNOC's "Daily Comp. Receiver Report" to the Division for September 28, 1985 as a travel complimentary.

11. The $25,200 cash payment to patron Chan on February 1, 1986 was reported on GNOC's "Daily Comp. Receiver Report" to the Division for February 1, 1986 as a miscellaneous complimentary.

12. The $29,400 cash payment to patron Chan on May 14, 1986 was not reported on GNOC's "Daily Comp. Receiver Report" to the Division for May 14, 1986.

13. The $25,200 cash payment to patron Chan on August 17, 1986 was reported on GNOC's "Daily Comp. Receiver Report" to the Division for August 17, 1986 as a travel complimentary.

14. The $25,200 cash payment to patron Chan on November 30, 1986 was not reported on GNOC's "Daily Comp. Receiver Report" to the Division for November 30, 1986.

15. The $29,400 cash payment to patron Chan was made on May 14, 1986 according to GNOC's Miscellaneous Disbursement Log, a copy of which is attached hereto as Joint Exhibit H. Patron Chan requested the complimentary from a GNOC Casino Shift Manager and the request was approved by the GNOC Vice President/Casino Manager. At patron Chan's request, the $29,400 in cash was then used in the partial redemption of consolidation counter check #618285 as indicated in Acknowledgement of Redemption document #4278762, a copy of which is attached hereto as Joint Exhibit M.

16. The $25,200 cash payment to patron Chan was made on November 30, 1986 (calendar day December 1, 1986) according to GNOC's Miscellaneous Disbursement Log, a copy of which is attached hereto as Joint Exhibit L. Patron Chan requested the complimentary from the

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GNOC Vice President/Casino Manager, who approved the request. At patron Chan's request, the $25,200 in cash was then used in the partial redemption of consolidation counter check #691306 as indicated in Acknowledgement of Redemption document #4311613, a copy of which is attached hereto as Joint Exhibit N.

17. During the period from September 21, 1985 through December 2, 1986, patron Chan engaged in gaming activity pursuant to his approved casino credit account during 13 trips to GNOC sustaining net gaming wins on 8 trips and net gaming losses on 5 trips.

18. On the 8 trips to GNOC that patron Chan sustained net gaming wins during the period referred to in paragraph 17, supra, patron Chan did not request from GNOC a cash complimentary and no such complimentary was made to patron Chan by GNOC.

19. On the 5 trips to GNOC that patron Chan sustained net gaming losses during the period referred to in paragraph 17, supra, patron Chan requested and received cash complimentaries from GNOC in the amounts described in paragraph 7, supra.

20. GNOC's player rating information of patron Chan indicates that patron Chan sustained the following net gaming losses at GNOC during the period from September 21, 1985 through December 2, 1986:

	Dates of Trip	Net Gaming Losses
1.	9/28/85 - 9/30/85	$150,000
2.	2/1/86 - 2/3/86	$301,000
3.	5/14/86 - 5/17/86	$348,000
4.	8/16/86 - 8/20/86	$298,500
5.	11/30/86 - 12/2/86	$298,500

21. Each of the cash payments was made following a request by the patron and subsequent review and approval of the request by GNOC personnel. The 5 cash payments made to patron Chan during the period from September 21, 1985 through December 2, 1986, as described in paragraph 17 through 20, supra, establish that patron Chan received

approximately 8.4% of his net gaming losses. The percentage of gaming loss calculations for the period reviewed are listed below:

	Cash Payment	Net Gaming Losses	Cash Payment as a % of Net Gaming Losses
1.	12,600	150,000	8.4% (.08400)
2.	25,200	301,000	8.4% (.08370)
3.	29,400	348,000	8.4% (.08448)
4.	25,200	298,500	8.4% (.08442)
5.	25,200	298,500	8.4% (.08442)

22. At all relevant times, GNOC's cage personnel issued a complimentary to a patron after having obtained authority from the appropriate person (the "Authorizer") within GNOC. After issuing a complimentary, GNOC utilized the following procedures to record the complimentary in its computer system. On a daily basis, GNOC's security personnel transport the Authorizer's copy of the "Disbursement Voucher" and the "Disbursement Sign-Off Log" from the casino cage to a clerk in the Accounts Receivable Department. The Disbursement Sign Off-Log lists the number of vouchers issued and their aggregate dollar value. The clerk enters the complimentary information into GNOC's computer system and generates the various reports for use by GNOC and the regulatory authorities including the "Daily Comp Receiver Report."

23. The Division's complaint alleges that GNOC violated N.J.A.C. 19:45-1.2(c)3 in recording payments to the patron without maintaining detailed, supporting and subsidiary records to support the accumulation of the costs of the complimentary at the time that the 5 payments referred to in paragraph 7, supra, were made to patron Chan during the period from September 28, 1985 through November 30, 1986. The Division's allegations have been summarized and set forth in issue B of the Prehearing Order dated July 15, 1987.

GNOC contends that N.J.A.C. 19:45-1.2(c)3 does not require supporting and subsidiary records to be maintained.

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24. The Division's complaint alleges that GNOC violated N.J.A.C. 19:45-1.2(c)3 in failing to submit to the Division a record of the costs of the complimentaries in GNOC's "Daily Comp. Receiver Report" which were filed with the Division on or about May 14, 1986 and November 30, 1986, as set forth in paragraphs 12 and 14, supra. The Division's allegations have been summarized and set forth in issue C of the Prehearing Conference Order dated July 15, 1987.

GNOC acknowledges that the May 14, 1986 and November 30, 1986 complimentaries were not included in GNOC's "Daily Comp. Receiver Report" for those dates. GNOC contends that the omissions were unintentional.

25. The Division's complaint alleges that GNOC violated N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a) in that the funds used in patron Chan's redemption transactions, as set forth in paragraphs 15 and 16, supra, provided patron Chan with credit or an advance of something of value or which represented value to enable patron Chan to engage in gaming activity as a player [N.J.S.A. 5:12-101(a)(1) and N.J. A.C. 19:45-1.25(a)(1)], to release or discharge patron Chan's debts to the casino [N.J.S.A. 5:12-101(a)(2) and N.J.A.C. 19:45-1.25(a)(2)] and by allowing the drawer of a counter check to redeem his counter checks by exchanging cash or chips in amounts that did not equal the amounts for which the counter checks were drawn [N.J.S.A. 5:12-101(c)]. The Division's allegations have been summarized and set forth in issue D of the Prehearing Conference Order dated July 15, 1987.

GNOC contends that N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a) are inapplicable to the facts in the instant matter.

26. The Division's complaint alleges that GNOC violated N.J.S.A. 5:12-104(a)(1) by entering into an agreement with patron Chan which provided for the payment of an amount that represented a percentage of the patron's net gaming losses at GNOC. The Division's allegations have been summarized and are set forth in issue E of the Prehearing Conference Order dated July 15, 1987.

GNOC contends that N.J.S.A. 5:12-104(a)(1) is not applicable to the instant matter. The parties stipulate that there was no written agreement to provide patron Chan with cash complimentaries. GNOC contends that there was no agreement between itself and patron Chan.

B. ADDITIONAL EVIDENCE

Leo Previti testified on behalf of the respondent. He is presently a corporate attorney with an affiliate of the respondent in New Jersey. He previously served as senior financial manager and operations controller with the respondent. According to Mr. Previti, he is thoroughly familiar with the respondent's procedures for issuance and recording of cash complimentaries.

As noted above, the cash payments made to patron Chan on May 14 and November 30, 1986, were not reported on the respondent's daily comp. receiver reports for May 14 and November 30, 1986. Mr. Previti testified that he conducted an investigation shortly before the hearing in this matter to determine why this information had not been recorded on these reports. His testimony at the hearing included an explanation of the procedures used by the respondent when a complimentary is issued.

According to Mr. Previti, when a cash complimentary was issued, the respondent's cage personnel would prepare and maintain a guest complimentary slip, a miscellaneous disbursement voucher, and a miscellaneous disbursement log. The guest complimentary slip would be completed by the casino executive giving the complimentary. It would record the date of the service, the amount and description of what was given, to whom it was given, and who authorized the complimentary. Mr. Previti stated that the miscellaneous disbursement voucher would be produced in the cage and would direct payment of cash from the cage. The information from the voucher would be recorded on the log, which is a continuous register of all cash payouts. The log is maintained in the cage and is signed by the cage shift manager. The log records the date, time, customer's name, description of the transaction, and amount.

It was the testimony of Mr. Previti that the miscellaneous disbursement log would be picked up by casino security near closing time and physically taken to the accounts receivable section. An accounts receivable clerk would then review the miscellaneous disbursement voucher and input the information into both the

financial system and the complimentary system. Mr. Previti learned that the cash complimentary issued to patron Chan on May 14, 1986, did not appear on the original run of reports occurring on the morning of May 15. The information had not been entered in a timely manner because a clerk had been unable to read the authorizer's identification number. Consequently, the clerk put the voucher into a manila folder containing matters "to be researched." The next day, the clerk's supervisor would determine the authorizer's name and number and the complimentary would be input into the system. Significantly, the inputting would be subsequent to the running of the daily comp. receiver report that the Division of Gaming Enforcement had already received for the date in question. When a daily comp. receiver report for May 14, 1986 was subsequently generated as part of Mr. Previti's investigation in April 1988 (Exhibit R-1), the $29,400 cash payment to patron Chan was recorded. This information also appeared on a "History Detail Mac Log Report" maintained by the respondent (Exhibit R-2).

Mr. Previti also testified concerning the respondent's recording of the cash complimentary paid to patron Chan on November 30, 1986. According to Mr. Previti, security picked up the appropriate documentation concerning complimentaries from the cage and these were brought to the accounts receivable clerk. However, the documents did not contain the authorization number needed by the clerk to input the data. Thus, the papers went into the "to be researched" file. Mr. Previti learned that although the cage had generated the guest complimentary slip, the miscellaneous disbursement voucher, and had maintained the miscellaneous disbursement log, the required information was never entered into the daily comp. receiver report. He concluded that the information had been misfiled.

Mr. Previti testified that the respondent has rectified the problem of inaccurate daily comp. receiver reports. Now, the report has been changed to show all the information which has been posted on a particular date. Thus, matters which had been set aside "to be researched" will be entered on the report issued on the day the information is subsequently obtained.

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

DISCUSSION AND CONCLUSIONS OF LAW

I. Has the respondent violated N.J.A.C. 19:45-1.2(c)3 by recording cash payments to the patron without maintaining detailed, supporting, and subsidiary records to support the accumulation of the costs of the complimentaries provided to the patron?

The Division alleges that the respondent has committed five violations of the requirements of N.J.A.C. 19:45-1.2(c)3 arising out of the five payments to Antonio Chan which the respondent made between September 28, 1985, and December 2, 1986. It is undisputed that the respondent's cage personnel prepared and maintained the following documents at the time of the issuance of the five payments: GNOC guest complimentary slips, GNOC miscellaneous disbursement vouchers, and GNOC miscellaneous disbursement logs. The Division contends that the documents prepared by the respondent which reflect the cash payments made to Antonio Chan do not satisfy the record-keeping requirements of N.J.A.C. 19:45-1.2(c)3. The respondent contends that it was not under a duty to maintain any additional documentation, as the documents which it prepared fully complied with the requirements of the regulation.

N.J.A.C. 19:45-1.2(a) requires each casino licensee to maintain complete, accurate, and legible records of all transactions pertaining to its revenues and costs. N.J.A.C. 19:45-1.2(b) provides that a casino licensee must also maintain detailed, supporting, subsidiary records sufficient to meet the requirements of subsection (c). Subsection (c) describes nine areas requiring such detailed, supporting, and subsidiary records. Among these is subsection (c)3, which refers to regulated complimentary services. N.J.A.C. 19:45-1.2(c)3 provides that the detailed, supporting, and subsidiary records shall include:

> Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. Such records shall include, on a daily basis, the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation. Excerpted from this requirement are the individual names of persons authorizing or receiving complimentary tickets

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> for theatre or other entertainment events . . . , parking [or] beverages served in bars and the casino. . . . .

Each of the aforementioned documents prepared by the respondent's cage personnel carry the notation "cash comp." However, some of these documents also contained additional information. Three of the miscellaneous disbursement vouchers have the following handwritten notation: "tickets," "plane tickets," and "six tickets." The guest complimentary slip and the miscellaneous disbursement log for August 17, 1986, contain the notation "air fare." These notations have been crossed out. Two of the five cash payments to Antonio Chan were reported to the Division as "travel" complimentaries by the respondent on its daily comp. receiver report for September 28, 1985, and August 17, 1986. One of the payments was reported to the Division as a "miscellaneous" complimentary on the respondent's daily comp. receiver report for February 1, 1986. The respondent's cash payments to patron Chan on May 14 and November 30, 1986 were not reported to the Division on the respondent's daily comp. receiver report for each of those dates.

The Division asserts that it is unable to determine the regulated complimentary service that was provided to patron Chan from its review of the documentation prepared and maintained by the respondent. There are no records which support any accumulation of travel costs by the patron. According to the Division, the only "expenses" incurred by the patron which are supported by records are the patron's gambling losses. It is the position of the Division that the respondent had an affirmative duty under N.J.A.C. 19:45-1.2(c)3 to provide detailed records to the Division indicating the true nature of the payments to Mr. Chan.

The Division argues that the legislative history regarding the record-keeping practices required of all casino licensees supports its position. In its report dated April 1977, the New Jersey State Commission of Investigation made several recommendations dealing with the record-keeping practices and reporting procedures to be required of casino licensees. Among the purposes to be served in regulating these practices and procedures was the need to monitor possible infiltration of undesirable elements into casinos and related activities. In regard to documentation, the SCI recommended in its report at 11,12-F:

> . . . that the regulatory body establish the minimal levels of supporting documentation that licensees must keep as evidence of their various transactions. Once again, if there are no requirements as to supporting documents, such as bills, invoices, contracts, etc., it will be difficult if not impossible to impose sanctions for failure to provide such documentation. More importantly, certain transactions

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> are of such importance that the form of documentation should be specified, covering check-cashing, junketeering, the purchase and destruction of casino chips and other areas where it is essential that specific controls be imposed and specific information recorded.

In its Second Interim Report, dated February 17, 1977, the Governor's Staff Policy Group on Casino Gambling also expressed its concern that minimum record-keeping requirements be imposed upon casino licensees. In support of this recommendation, the staff policy group identified a variety of illegal activities which could compound the difficulty of accurately assessing the revenue aspect of casino operation. The Casino Control Commission has also spoken concerning the need to keep accurate accounting records in regard to complimentary services. In State of New Jersey v. Greate Bay Hotel and Casino, Inc. and Patricia Jean DiGiacomo, OAL DKT. NO. CCC 5460-83, AGENCY DKT. NO. 83-17, Initial Decision dated March 26, 1984, Commission Decision dated July 25, 1984 at 19, the Commission stated, "the failure to keep accurate accounting records on complimentary services strikes at the heart of all accounting controls. The ability of the [Division] to monitor complimentary practices and the Commission to audit significant expenditures is largely dependent upon completeness and accuracy of true accounting records."

Greate Bay had been charged with failing to maintain proper supporting documentation in the issuance of a $325,000 cage disbursement check given to a group of foreign gamblers to reimburse the group for its air fare expenses. Greate Bay did not obtain any documentation from the group, such as airline tickets, to support the disbursement. Instead, the casino's director of casino marketing prepared a document in which he computed the air fare figure based on his own estimates. He estimated the round trip air fare from Hong Kong to New York and multiplied that figure by the number of people in the group. He then added another estimated figure attributed to "other players' guests and children." Commenting on the adequacy of this document, Administrative Law Judge Jeff Masin stated in his initial decision at 16:

> The above document obviously is not a satisfactory supporting and subsidiary, detailed and accurate record concerning the complimentary services provided. Greate Bay does not contend that it is so. It admits that it failed to keep the proper records. In mitigation it indicates that it reported the complimentary travel expenditure in its monthly report of payables. As noted by the petitioner, this report hardly serves the function that is served by the daily report to the Division which enables the Division to keep tabs on who is receiving complimentary services, for

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> what, when, in what amount and other significant facts which may play a role in the Division's overall supervisory and law enforcement posture vis-a-vis the casinos.

The Division contends that the simple inclusion of the notation "cash comp." on the documentation prepared by the respondent's personnel is inadequate for purposes of complying with N.J.A.C. 19:45-1.2(c)3. Since the record-keeping regulation is intended to provide the regulatory authorities with sufficient information to monitor the flow of cash in and out of the casinos, the notation of "cash comp.," without any reference to expenses incurred by the patron, creates another avenue of skimming and kickbacks. The Division contends that it would face significant hurdles in detecting such a scheme if no additional information or documentation were required.

The essence of the Division's allegation is that the respondent failed to obtain receipts or any other documentation from patron Chan to support the recording of its cash payments to the patron. The respondent contends that it was under no duty to obtain any records from the patron prior to giving a cash complimentary. In support of this contention, the respondent relies upon N.J.A.C. 19:45-1.2(c)3, which sets the casino licensee's record-keeping obligation in regard to regulated complimentary services. As noted above, this regulation provides that records supporting the accumulation of the costs and number of persons, by category of service, shall include on a daily basis the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such a person, and the person authorizing the receipt of such service. These are the records which the casino licensee shall maintain; the regulation makes no mention of patron verification.

The information which the regulation expressly requires be maintained by the casino licensee is set forth in its guest complimentary slips, miscellaneous disbursement vouchers and the miscellaneous disbursement log. The respondent contends that neither the regulation nor the intent of the regulation, as can be ascertained from the legislative history, requires the respondent to obtain any records from a patron prior to giving a cash complimentary. The respondent asserts that it has maintained the required records and that these records enable the Division to ascertain that a complimentary was given, its amount, and which casino licensee-employee approved it. The respondent asserts that its situation is clearly distinguishable from that of Greate Bay, supra, where the documentation maintained by that licensed casino was concededly insufficient.

The respondent also contends that its position is supported by the interlocutory order of Administrative Law Judge Solomon A. Metzger in the matter of State of New Jersey v. Trump's Castle Assoc. Limited Partnership, et al, OAL DKT. NOS. CCC 825-87 and CCC 5301-87 (consolidated), AGENCY DKT. NOS. 87-214 and 87-425, Order Granting and Denying Motion for Partial Summary Decision, dated December 16, 1987. In Trump's Castle, Judge Metzger concluded that N.J.A.C. 19:45-1.2(c) does not include among its requirements that a casino licensee obtain verification of patron expenses to support issuance of complimentaries. At its public meeting of January 6, 1988, the Casino Control Commission denied the Division's request for interlocutory review of Judge Metzger's order dismissing the Division's charges under N.J.A.C. 19:45-1.2(c)3.

In this matter, the respondent argues that the Division should be estopped by Judge Metzger's decision from arguing that the respondent should be found liable for failing to obtain expenses verification from patron Chan. The Division acknowledges that collateral estoppel may be applied to administrative agencies in appropriate situations. Hackensack v. Winner; 82 N.J. 1, 32 (1980). However, the Division contends that the doctrine should not be applied in the instant matter because Judge Metzger's order is interlocutory and the Casino Control Commission did not address the merits of the issue when it declined interlocutory review.

Absent a final determination by the Casino Control Commission, the Division should not be estopped from contending in this matter that the respondent was required to obtain expenses verification from patron Chan prior to giving the patron a cash complimentary. Nevertheless, Judge Metzger's reasoning in Trump's Castle is persuasive. Verification of patron expenses is not required under N.J.A.C. 19:45-1.2(c)3. While consequences adverse to the casino licensee may arise from its payment of cash complimentaries to patron Chan, I nevertheless **CONCLUDE** that the respondent maintained the required detailed, supporting, and subsidiary records to support the recording of cash payments to the patron, in accordance with N.J.A.C. 19:45-1.2(c)3. The Division's allegation to the contrary should be **DISMISSED.**

II. Has the respondent violated N.J.A.C. 19:45-1.2(c)3 by failing to submit to the Division a record of the costs of the complimentaries provided to the patron in the respondent's "daily comp. receiver report" on May 14 and November 30, 1986?

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In addition to requiring casino licensees to maintain on a daily basis records supporting the accumulation of the costs for regulated complimentary services, N.J.A.C. 19:45-1.2(c)3 requires submission of this daily record to the Division no later than two days subsequent to its preparation. The respondent normally satisfies this requirement by filing its daily comp. receiver report with the Division on a daily basis. The respondent concedes that it did not include the $29,400 cash payment to patron Chan on May 14, 1986, in its daily comp. receiver report to the Division for that date. The respondent also acknowledges that it did not include its $25,200 cash payment to patron Chan on November 30, 1986, in its daily comp. receiver report to the Division for that date.

Former operations controller Leo Previti testified on behalf of the respondent that he conducted an investigation to determine why this information had not been recorded on the appropriate reports submitted to the Division. The documentation for the issuance of these cash complimentaries had been brought from the casino cage to the accounts receivable clerk. In Mr. Previti's opinion, the accounts receivable clerk did not enter the information into the complimentary reporting system because the documentation probably lacked a readable authorization identification number. In both instances, the papers were put aside "to be researched." Thus, the cash payments to patron Chan on May 14 and November 30, 1986, did not appear on the respondent's daily comp. receiver reports submitted to the Division for those two days.

Mr. Previti learned that the information concerning the cash payment to patron Chan on May 14, 1986, was eventually entered into the respondent's complimentary reporting system. He believed that this occurred sometime prior to November 19, 1986, which was the date of a Division investigation report into the matter. As of the date of the hearing in this matter, the $25,200 payment to patron Chan on November 30, 1986, still had not been entered into the respondent's complimentary reporting system. However, Mr. Previti testified that the respondent has taken steps to rectify the problem of inaccurate daily comp. receiver reports. Now, the report has been changed to show all of the information which has been posted on a particular date. Thus, matters which had been set aside "to be researched" will be entered on the report issued on the day the information is subsequently obtained.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent has on two occasions violated N.J.A.C. 19:45-1.2(c)3 by failing to

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submit to the Division a record of the costs of the complimentaries provided to the patron in the respondent's daily comp. receiver report on May 14 and November 30, 1986.

III. Has the respondent violated N.J.S.A. 5:12-101(a) and (c) and N.J.A.C. 19:45-1.25(a) because the cash complimentary funds used in the patron's redemption transactions provided the patron with credit or an advance of something of value to enable the patron to engage in gaming activity as a player; because the cash complimentary funds used in the patron's redemption transactions represented a release or discharge of the patron's debts to the casino; and because the cash complimentary funds allowed the patron to redeem counter checks by exchanging cash or chips in an amount less than the amount for which the checks were drawn?

From September 21, 1985 through December 2, 1986, patron Chan engaged in gaming activity pursuant to his approved casino credit account during 13 trips to the respondent's casino. On five of these trips, patron Chan sustained net gaming losses. On those same five trips, he requested and received cash complimentaries from the respondent.

On two of the five occasions when patron Chan received a cash complimentary, he then used the cash in the redemption of his outstanding counterchecks. On May 14, 1986, patron Chan received a payment of $29,400 at approximately 10:45 p.m. Just minutes later, patron Chan used the $29,400 in the partial redemption of his outstanding counter check. Chan received a cash payment of $25,200 on November 30, 1986. At his request, the cash was then used in the partial redemption of his counter check.

The Division contends that the provision of funds by a casino licensee to a casino patron, which funds are used to pay off the patron's outstanding gambling debts, violates N.J.S.A. 5:12-101(a) and (c) and N.J.A.C 19:45-1.25(a). Section 101a(1) of the Casino Control Act and N.J.A.C. 19:45-1.25(a)1 both provide that "[e]xcept as otherwise provided in this section, no casino licensee, or any person licensed under the Casino Control Act . . . shall":

(1) [C]ash 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;

In State of New Jersey v. Boardwalk Regency Corp., OAL DKT. NOS. CCC 7452-82 and CCC 6325-81 (October 21, 1982); Commission Final Decision dated January 4, 1983, the Casino Control Commission described the intent of the foregoing statutory and regulatory language:

> [t]he clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in these operations. See, Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981) . . . The regulations promulgated under §101 are equally detailed in their requirements for the extension and control of credit. See, N.J.A.C. 19:45-1.25 to 1.30, [at 11 and 12]

Referring to the policy of strict regulation and control over the extension of credit to patrons, the Division argues that a casino may not simply give a patron the funds to be used in gaming activity. The Division contends that it likewise cannot be within the permissible limits of the act or regulations for a casino to give a patron the cash necessary to redeem his counter checks after the patron has completed his play at the gaming tables. To construe the statute otherwise would be to permit an anomalous result. The Division also contends that the cash payments by the respondent to Mr. Chan enabled the patron to free a portion of his credit line through the redemption transactions. The patron then had additional credit available for gaming activity.

The respondent argues that N.J.S.A. 5:12-101 is inapplicable in this matter, because it merely gave patron Chan a cash complimentary. The respondent notes that the Division's theory would bar all complimentaries, since even the most minuscule complimentary, such as a meal or a drink, would "free a portion" of a patron's credit line, because the patron would not then have to expend funds for the item. The respondent did not give the complimentaries to patron Chan to allow him to gamble or to redeem his counter checks. Rather, the respondent gave Chan a cash complimentary on five occasions because he is a "very valuable patron" with a "very high credit line."

On two of the five occasions when the respondent gave patron Chan a cash complimentary, he then voluntarily asked to have the complimentary applied to his debt. The Division did not charge the respondent with violating section 101 of the

act in regard to the three occasions when Chan did not ask to have the complimentary applied to his debt. According to the respondent, the lawful issuance of the cash complimentaries was not rendered unlawful by Chan's subsequent request on two occasions that the proceeds from the disbursement be applied by GNOC against Chan's outstanding counter checks.

Chan was under no obligation of repayment when the respondent gave him the cash complimentaries. He could use the money as he wished. Since the cash complimentary did not have to be repaid, the respondent argues that the payment should not be construed as a loan, credit, or advance of anything of value which enables a person to take part in gaming activity as a player.

The respondent's arguments remain plausible so long as the interaction between the respondent and patron Chan is viewed only as separate transactions. For purposes of this proceeding, the issuance of the cash complimentary was not by itself a violation. The patron could do what he wanted with the money. It did not have to be repaid. On two occasions, the patron voluntarily decided to apply the money to the redemption of his outstanding counter checks. Each of these events would appear to be permissible under the statute and regulations when viewed separately.

However, the interaction between the respondent and patron Chan must be scrutinized in its entirety. This is especially so, given the "clear legislative purpose of section 101" to require "the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in those operations." On two occasions, the issuance of cash complimentaries to patron Chan did constitute the provision of credit which enabled him to engage in gaming activity as a player. This occurred on May 14 and November 30, 1986, when Mr. Chan was permitted to apply cash payments from the respondent to redeem his counter checks.

Mr. Chan gambled at GNOC pursuant to his "very high credit line." The amount of credit available to him for gambling activity on May 14, 1986, was increased by $29,400; the amount of cash which patron Chan had been given by the respondent that day. The amount of credit available to him for gambling activity on November 30, 1986, was increased by $25,200; the amount of cash which patron Chan had been given by the respondent that day. Accordingly, I **CONCLUDE** that the respondent violated N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1 when it

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permitted patron Chan to use cash complimentary payments from the respondent in his redemption transactions on May 14 and November 30, 1986, thereby providing the patron with additional credit to enable him to engage in gaming activity as a player.

The Division also contends that the respondent violated section 101a(2) of the act and N.J.A.C. 19:45-1.25(a)2 in that the cash complimentary funds used in the patron's redemption transactions represented a release or discharge of the patron's debts to the casino. Section 101a(2) of the act provides that a casino licensee shall not:

> [r]elease 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.

N.J.A.C. 19:45-1.25(a)2 provides that a casino licensee shall not:

> [r]elease or discharge any debt which is uncollectable, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 19:45-1.29.

On May 14, 1986, patron Antonio Chan had a debt to respondent GNOC in the amount of $350,000, as represented by his outstanding counter check. Mr. Chan asked for and received a cash payment from the respondent in the amount of $29,400. Just minutes after receiving this money, the patron then used the funds to partially redeem his counter check. A new counter check was issued in the amount of $320,600 (see Stipulation of Facts, exhibit J-1).

On November 30, 1986, patron Chan's outstanding debt to the respondent was $300,000, as represented by his counter check. On that day, the patron asked for and received a cash payment from the respondent in the amount of $25,200. Shortly after the patron received this cash payment, the respondent permitted him to apply the funds to the partial redemption of his counter check. A new counter check was then issued in the amount of $274,800.

The Division asserts that there is no evidence in the record to indicate that the patron's outstanding debts were uncollectable. The respondent does not have a written record which indicates that the patron's checks were deposited and

returned, that "collection efforts" were undertaken and that returned checks were "considered uncollectable." N.J.A.C. 19:45-1.28(a), N.J.A.C 19:45-1.29(a) and (j). These are threshold requirements for establishing uncollectability. In their absence, the respondent would not be permitted to release or discharge a portion of the patron's debts on May 14 and November 30, 1986.

The respondent contends that it did not "release or discharge" a debt. Rather, it merely issued patron Chan a cash complimentary. As before, the respondent asserts that the patron was free to use that money in any way he desired. That the respondent subsequently complied with the patron's request to apply the cash complimentaries toward the redemption of his counter checks would not then mean that the respondent had released or discharged a debt.

Again, the respondent's arguments appear to be plausible when the interaction between the respondent and the patron is viewed as separate transactions. However, this interaction must be viewed in its entirety. It is clear that the respondent complied with the patron's request for issuance of cash complimentaries and then, shortly thereafter, complied with the patron's request to apply the funds to the partial redemption of the patron's counter checks. There is no doubt that this transaction reduced the patron's debt to the casino by the amount of the cash complimentary. The plain language of section 101a(2) of the act and N.J.A.C 19:45-1.25(a)2 prohibits the release or discharge of a patron's casino debt, either in whole or in part, until proper debt collection procedures have been pursued and recorded by the casino licensee. These procedures were not pursued and recorded by the respondent. Accordingly, I **CONCLUDE** that the respondent has violated N.J.S.A. 5:12-101a(2) and N.J.A.C 19:45-1.25(a)2 because the cash complimentary funds used in the patron's redemption transactions on May 14 and November 30, 1986, represented an improper release or discharge of the patron's debts to the casino.

The Division has also charged the respondent with violating N.J.S.A. 5:12-101c, alleging that the cash complimentary funds allowed the patron to redeem counter checks by exchanging cash or chips in an amount less than the amount for which the checks were drawn. Section 101c of the act provides in pertinent part:

> 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 . . . for the difference between the original check and the cash or chips tendered;

The Division contends that the patron was able to redeem his counter check by exchanging cash or chips in an amount less than the amount for which the check was drawn. On May 14, 1986, $29,400 of the funds necessary to redeem patron Chan's counter check for $350,000 was provided in the form of a cash complimentary issued to the patron by the respondent. On November 30, 1986, $25,200 of the funds necessary to redeem patron Chan's outstanding counter check for $300,000 was provided in the form of a cash complimentary issued to the patron by the respondent. The Division asserts that in this way, the drawer of the counter checks was able to redeem the checks by exchanging cash in an amount less than the amount for which the checks were drawn.

The respondent argues that section 101c of the act deals only with the method by which a patron may redeem a check; it doe not address the source of those funds. According to the respondent, there was no relationship between the cash complimentaries which it issued to the patron and the patron's outstanding counter checks. The respondent gave the patron a cash complimentary whenever he lost, regardless of whether or not there were outstanding counter checks. On two occasions, patron Chan voluntarily asked the respondent to apply the cash complimentaries to his debts. The respondent asserts that its compliance with this request did not violate the method of redemption required by section 101c.

I do not accept the respondent's contentions. Viewing the entirety of the interaction between the respondent and patron Chan, it is apparent that on two occasions the respondent was the source of a significant portion of the funds used by patron Chan to redeem his outstanding counter checks. By providing funds to the patron in the form of cash complimentaries, the respondent allowed the patron to redeem counter checks by exchanging cash or chips in an amount less than the amount for which the checks were drawn. I **CONCLUDE** that the respondent violated N.J.S.A. 5:12-101c by this method of redemption on May 14 and November 30, 1986.

IV. Has the respondent violated N.J.S.A. 5:12-104a(1) by entering into an agreement with a patron which provided for the payment of an amount which represented a percentage of the patron's net gaming losses?

N.J.S.A. 5:12-104a(1) provides:

> Unless otherwise provided in this subsection, no agreement which provides for the payment, however defined, of any direct or indirect interest, percentage or share of any money or property gambled at a casino or derived from casino gaming activity or of any such interest, percentage, or share of any revenues, profits or earnings of any casino shall be lawful.

The Division alleges that a pattern of conduct existed between the respondent and patron Antonio Chan which establishes an unlawful agreement to reimburse Mr. Chan a percentage of the amounts that he lost during his gaming activity. On five different trips to the respondent's casino between September 28, 1985, and December 2, 1986, patron Chan gambled according to his credit line and sustained losses. When he lost, he requested a cash payment from the respondent.

In all five instances when the patron sustained gambling losses and requested a payment, the request for payment was reviewed and approved by the respondent's personnel. On each occasion, the payments to patron Chan amounted to approximately 8.4 percent of his net gaming losses. The losses ranged from $150,000 to $348,000. Nevertheless, in each instance the patron asked for and received a cash payment amounting to approximately 8.4 percent of his net gaming losses. The Division asserts that the pattern of conduct between patron Chan and the respondent establishes that an agreement existed, the terms of which violated N.J.S.A. 5:12-104a(1).

The respondent argues in the first instance that section 104 of the Casino Control Act is inapplicable to its issuance of cash complimentaries to patron Chan. The Legislature's purpose in enacting section 104 was to preclude organized crime and others unsuitable for licensure from circumventing the licensing criteria and infiltrating licensed casino operations. Thus, N.J.S.A. 5:12-104 serves to insure that no company could circumvent the casino license criteria embodied in section 82 of the act and obtain an ownership percentage of a casino by a contract or lease. The respondent asserts that the Casino Control Commission has always interpreted the original enactment of section 104 and its amendments to address only the danger of organized crime circumventing the licensing criteria. There is no other known legislative intent in enacting the section or its amendments. The respondent argues that to advance any other reading of section 104 could only serve to saddle the State with a misinterpretation which would thwart and trivialize the Legislature's true intent and worthwhile objective.

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Assuming arguendo the applicability of section 104 to the present matter, the respondent contends that there was no agreement to provide patron Chan with a set percentage of his losses. The parties have stipulated that there was no written agreement to provide patron Chan with cash complimentaries. The respondent contends that there also was no oral agreement to provide Mr. Chan with cash complimentaries, let alone a set percentage of his gambling losses. The respondent asserts that "agreement" in the context of section 104 of the act implies a contract pursuant to which the respondent was obligated to pay patron Chan money, as opposed to its voluntarily issuing him cash complimentaries.

The respondent states that it valued Mr. Chan as a patron and voluntarily issued him cash complimentaries to secure his business because "he has a very high credit limit." The respondent's personnel conducted a "review and approval" of each request prior to the issuance of a cash complimentary to Mr. Chan. The respondent argues that there would have been no need for the "review and approval" if there were a prevailing agreement to give set percentages.

I do not accept the respondent's contention that section 104 of the Casino Control Act is inapplicable to transactions between a casino and gambling patron. Except as specifically set forth in subsections 2 through 5, section 104a(1) of the act prohibits a licensed casino from entering into any agreement which provides for the payment of any percentage of any money gambled at a casino or derived from casino gaming activity. The language of the statute is clear and unambiguous. It is a broad prohibition, and the exceptions set forth in subsections 2 through 5 of N.J.S.A. 5:12-104a are inapposite to the present matter. Thus, an agreement between a casino and a patron which provided for the payment of an amount which represented a percentage of the patron's net gaming losses would be prohibited by section 104a(1).

Even if it were necessary to review the pertinent legislative history, that history is not inconsistent with the above interpretation given to the plain language of section 104. It is undisputed that a primary reason for the enactment of section 104 was to prevent the infiltration of organized crime into the casino industry. The State Commission on Investigation had recommended that the Legislature enact a provision which required that those who have the authority to affect a casino's operation in any way be subject to the scrutiny of a licensing process. SCI Report, supra.

It is the paramount intention of section 104 to prevent those who have not undergone the scrutiny attendant to qualification for licensure from expressing a voice in or control over any aspect of a casino's operations. While the primary focus of the Legislature's concern was organized crime, the plain language of the statute is not restricted to only one possible source of improper influence. There can be little doubt that a patron who can ask for and always receive a large sum of money from the casino representing a fixed percentage of the money which he has gambled and lost is exerting a significant degree of authority or control over the casino's operations. Thus, I **CONCLUDE** that section 104a(1) of the act is applicable to the present matter.

Did the respondent enter into an agreement with patron Chan which is prohibited under section 104? There is no written agreement. The respondent contends that there was no agreement between itself and patron Chan. However, the undisputed facts in this matter reveal a pattern of conduct between the respondent and patron Chan which establishes that the respondent entered into an agreement with the patron to provide him with cash payments of an amount which reimbursed him a percentage of his gaming losses.

On five occasions between September 28, 1985 and December 2, 1986, the patron gambled according to his credit line at the respondent's casino and he sustained gambling losses. On each occasion when he sustained a gambling loss, the patron requested a cash payment from the respondent. On all five occasions, the request for payment was reviewed and approved by the respondent's personnel. Most signficantly, the payment to patron Chan on each occasion amounted to approximately 8.4 percent of his gambling losses. Based upon the foregoing discussion, I **CONCLUDE** that the respondent violated N.J.S.A. 5:12-104a(1) by entering into an agreement with patron Chan which provided for the payment of an amount which represented a percentage of the patron's net gaming losses.

PENALTY

Section 129 of the Casino Control Act authorizes the Commission to impose a broad range of sanctions upon licensees who have violated any provisions of the act or regulations, or have committed other misconduct. Among the authorized sanctions is suspension of the operations certificate of any casino for violating any provisions of the act or regulations relating to the casino operation, including

games, internal and accountancy controls and security. The Commission may also assess such civil penalties as may be necessary to punish misconduct and to deter future violations.

Section 130 of the act sets forth standards which the Commission shall consider in determining the appropriate sanction to be applied in a particular case. These standards are as follows:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated herein;

c. Any justification or excuse for such conduct by the licensee or registrant;

d. The prior history of the particular licensee or registrant involved with respect to gaming activity;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission and not to a finding of a violation itself.

The respondent has committed two violations of N.J.A.C. 19:45-1.2(c)3 by failing to submit to the Division a record of the costs of the complimentaries provided to patron Chan in the respondent's daily comp. receiver reports for May 14 and November 30, 1986. The respondent has committed two violations of N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a) pursuant to it having permitted the patron to use cash complimentary funds in his redemption transactions on May 14

and November 30, 1986. The respondent has also committed a violation of N.J.S.A. 5:12-104a(1) by entering into an agreement with patron Chan which provided for the payment of an amount which represented a percentage of the patron's net gaming losses.

In assessing the risk to the public and to the integrity of gaming operations created by the respondent's violations, it is useful to first note the Legislature's finding and declaration of public policy set forth at N.J.S.A. 5:12-1b(6) of the act:

> 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.

As noted above, the Commission has stated that it is the clear legislative purpose of section 101 of the act to strictly regulate and control the extension of credit, in order to further confidence and trust. State of New Jersey v. Boardwalk Regency Corp., supra, at 11. It is fair to say that the respondent's agreement to reimburse a valued patron with a fixed percentage of his gaming losses undermines the Legislature's and the Commission's declared goal of maintaining public confidence in the integrity of the casino industry. The Commission has also noted that, "the failure to keep accurate accounting records on complimentary services strikes at the heart of all accounting controls." Greate Bay, supra, at 19. Thus, it is apparent that the respondent's failure to submit a record of the complimentaries provided to patron Chan in its daily comp. receiver reports for May 14 and November 30, 1986, would also adversely affect the public confidence and trust in the integrity of gaming operations.

The respondent argues that the factors set forth in section 130 of the act militate in favor of a small penalty in this matter. Assuming arguendo that there have been any violations, the respondent urges that these be deemed inadvertent, unintentional and unknowing violations of provisions of the Casino Control Act. The respondent contends that the facts demonstrate that a minor penalty, if any, is appropriate, and asserts that, for consistent justice, the penalty should be less than the $10,000 penalty imposed in Greate Bay.

The Division's performance of its enforcement duties was hindered by the respondent's failure to record the cash complimentaries provided to patron Chan on its daily comp. receiver reports for May 14 and November 30, 1986. The patron was permitted by the respondent to use the cash complimentary funds which he received on those two days in his redemption transactions, violating N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a). The patron's requests for payments of large amounts of cash were reviewed and approved by high level personnel. In each instance, the respondent agreed to make a cash payment to the patron which represented a fixed percentage of the patron's gaming losses, in violation of section 104a(1) of the act.

Based upon the facts in this matter, I **CONCLUDE** that the respondent knew or should have known that its conduct constituted a serious contravention of the provisions of the Casino Control Act and the Commission's regulatory requirements. While the respondent's failure to report complimentary cash payments to patron Chan on two daily comp. receiver reports was unintentional, the remainder of its conduct was purposeful. In essence, the respondent acted as it did in order to keep the business of a "very valuable patron" with a "very high credit line."

In regard to the prior history of the licensee with respect to gaming activity, the Division refers to the matter of State of New Jersey v. GNAC Corp. t/a Golden Nugget, et al, AGENCY DKT. NO. 84-6, Final Order dated October 2, 1984. In that matter, the Division charged GNAC (the respondent's predecessor in interest) and four individuals with violations of the conduct of the rules of the game of blackjack, including sections 99 and 100 of the act, and N.J.A.C. 19:47-2.5 and 2.6. In that matter, the respondent's personnel honored a patron's request that the dealer deal cards from a single hand-held deck, rather than from the required number of decks in the card shoe. The Commission imposed a monetary penalty against GNAC in the amount of $25,000.

The respondent acknowledged its failure to include two of its cash payments to patron Chan on its daily comp. receiver report. Testimony was offered at the hearing to establish that omissions such as this should not occur in the future because information which is not posted on the report on a particular day because it is incomplete will now be posted on the report for the day on which the complete information is obtained. The respondent offered no other evidence concerning corrective action which it has taken, since it contested the allegations of additional violations.

The respondent benefited financially from its misconduct. Between September 1985 and December 1986, the respondent made cash payments to patron Chan totalling $117,600. During that same time, patron Chan sustained net gaming losses at the respondent's casino which totalled $1,396,000. In light of the risk to the public and to the integrity of gaming operations created by the respondent's serious misconduct, it is apparent that a significant monetary penalty is warranted. A monetary penalty in the amount of $15,000 for each of the two violations of N.J.A.C. 19:45-1.2(c)3 should be imposed. A monetary penalty in the amount of $20,000 for each of the two violations of N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a) should be imposed. Finally, a monetary penalty in the amount of $50,000 for the violation of N.J.S.A. 5:12-104a(1) should be imposed, for a total monetary penalty of $120,000. I so **CONCLUDE**.

ORDER

Accordingly, it is ORDERED that the respondent, GNOC Corp. t/a Golden Nugget Hotel and Casino, shall pay a civil monetary penalty in the amount of $120,000 pursuant to N.J.S.A. 5:12-129(5).

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

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

October 3, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

10-13-88
DATE

Marianne Fine
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE OCT 6 1988

Ronald J. Parks/K.S
OFFICE OF ADMINISTRATIVE LAW

jz

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EXHIBITS

Joint exhibits:

J-1 Stipulation of Facts with attachments A through N

Petitioner's exhibits:

None

Respondent's exhibits:

R-1 Computer printout generated April 1, 1988; Daily Comp. Receiver Report for May 14, 1986

R-2 Computer printout generated March 9, 1988; History Detail MAC Log Report for May 14, 1986

WITNESSES

For the petitioner:

None

For the respondent:

Leo Previti

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-114
OAL DOCKET NO. CCC 8477-87
ORDER NO. 89-6-14

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

Complainant,

ORDER

v.

GNOC CORPORATION, t/a
THE GOLDEN NUGGET HOTEL AND CASINO,

Respondent.

The parties having entered into a stipulation of facts and having filed same with the Office of Administrative Law (OAL); and the written argument of counsel having been filed with the OAL; and the initial decision of Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 8, 1989,

IT IS on this 10th day of March 1989, ORDERED for the reasons stated on the record that the initial decision is modified as follows:

(1) to reject the finding of a violation as to Count Three of the Division of Gaming Enforcement's (DGE) complaint;

(2) to reject the finding of a violation of N.J.A.C. 19:41-3(b) with

respect to Counts One and Two of the DGE's complaint; and

(3) to reduce the monetary penalty imposed on the respondent by the ALJ from $7500 to $6,000 to be apportioned $5,000 on Count One and $1,000 on Count Two of the DGE's complaint.

IT IS FURTHER ORDERED that the respondent is found to have violated N.J.S.A. 5:12-106(a) and -117(b) for employing a person who only held a casino hotel employee registration in the position of Assistant V.I.P. Services Manager, a position requiring licensure as a casino employee; and

IT IS FURTHER ORDERED that the respondent is found to have violated N.J.S.A. 5:12-106(a) and -117(b) for employing a person, whose casino employee license had expired without renewal in the position of public area attendant, which at the time required licensure as casino employee; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of $6,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8477-87
AGENCY DKT. NO. 88-114

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
G.N.O.C., CORP., T/A THE GOLDEN NUGGETT HOTEL AND CASINO,
Respondent.

Frances Sundheim, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Latha A. Gilliam, Esq., for the respondent

Record Closed: July 26, 1988 Decided: November 1, 1988

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint on November 13, 1987 with the Casino Control Commission (Commission) seeking penalties against the respondent licensee (GNOC) for various violations of the Casino Control Act concerning employment of several employees without the proper licenses or permits. See, N.J.S.A. 5:12-90a, 106a, 117b 117c; N.J.A.C. 19:41-1.31.7. The parties have stipulated to the facts of the violations but dispute the issue of penalty. Respondent, GNOC also moves to dismiss the complaint insofar as it alleges violations of N.J.S.A. 5:12-90a against the licensee.

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The Commission transmitted this matter to the Office of Administrative Law on December 18, 1987 for hearing as a contested case and it was preheard on February 25, 1988. A plenary hearing was scheduled for May 17, 1988 and, at that time, the parties agreed to enter into a stipulation of facts and to brief the remaining issue of penalty. The Division filed its brief and the stipulation of facts on May 26, 1988, and GNOC responded on July 20, 1988. The Division was given until July 26th to respond but elected not to do so and the record was closed on that date. The forty-five day expired on September 9, 1988 but the due date for submission of the intial decision was extended until October 28, 1988 for a variety of reasons including the need for additional research as well as my illness.

FINDINGS OF FACT

COUNT I

The Division and GNOC have stipulated to the following facts:

1. Respondent, GNOC, Corp., (hereinafter called "GNOC") t/a Bally's Grand owns and operates the casino hotel formerly known as the Golden Nugget Hotel and Casino. GNOC was at all times referenced herein a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at Boston and Pacific Avenues, in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. At all times referenced herein, GNOC was the holder of a plenary casino license issued to it by the Casino Control Commission ("Commission"), authorizing it to operate a casino in accordance with the Act and Commission regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984, and GNOC was conducting its casino hotel operations pursuant to said license, at all times referenced herein.

3. At all times referenced herein, GNOC was the holder of, and operated pursuant to, a Certificate of Operation effective May 1, 1984, at which time, GNOC was the holder of a temporary casino permit. GNOC conducted its casino operations pursuant to said Certificate of Operation

at all times referenced herein. Said Certificate of Operation entitled GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder.

4. GNOC is the successor in interest to GNAC, CORP., (GNAC), t/a the Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded to GNAC's interest as casino licensee, as of May 1, 1984.

5. GNOC is a wholly-owned subsidiary of GNAC, which in turn is a wholly-owned subsidiary of Bally Manufacturing Corporation ("Bally"). By Purchase Agreement dated as of January 18, 1987, as amended February 28, 1987, all of the outstanding stock of GNAC, among other property, was sold by Golden Nugget, Inc., to Bally, which thus became a holding compnay of GNOC.

6. From February 27, 1987 through May 13, 1987, Sharon Fate, casino hotel employee registration number 57339-40, was working in golden Nugget's V.I.P. Services Department as "Assistant V.I.P. Services Manager", a position designated by the Commission to require casino employee licensure. During the foregoing time period, Ms. Fate did not hold a casino employee license. A copy of the job description for the position of Assistant V.I.P. Services Manager is attached hereto, and incorporated herein as Exhibit "A".

COUNT II

1. The parties repeat paragraphs 1 through 5 of Count I of the Stipulation, as though fully set forth herein at length.

2. The casino employee license of Elijah Torrence, license #22052-22, expired on January 31, 1987.

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3. From January 31, 1987 through May 14, 1987, Mr. Torrence worked at Golden Nugget as a public area attendant with access to the casino floor, a position requiring a casino employee license.

4. Duiring the period of January 31, 1987 through May 14, 1987, Mr. Torrence held no other casino employee license or hotel registration issued by the Commission. Elijah Torrence was placed on temporary leave by GNOC on May 14, 1987. A copy of the GNOC Work Permit Report dated may 3, 1987, is attached hereto, and incorporated herein as Exhibit "B".

COUNT III

1. The parties repeat paragraphs 1 through 5 of Count 1 of the Stipulation, as though fully set forth herein at length.

2. By letter dated November 21, 1985, in response to a job submission by GNOC the Commission, by its staff, advised GNOC that prior to the commencement of an in-house surveillance training course surveillance trainees are required to submit a position addition with the Commission. A copy of said letter is attached hereto, and incorporated herein as Exhibit "C".

3. Frank Kovach, casino employee license #59613-21, was hired by GNOC on June 1, 1987, and placed in an outside surveillance training course. The on-site training at the Golden Nugget, included access to the monitor room. The requisite eighty (80) training hours were completed by Mr. Kovach on June 15, 1987. The position addition and work permit delineating specific job responsibilities was not obtained from the Commission by, for or on behalf of Mr. Kovach until July 8, 1987. A copy of the June 16, 1987 license inquiry printout is attached hereto, and incorporated herein as Exhibit "D".

4. Jay Weiss, casino employee license #30055-21, was hired by GNOC on May 18, 1987, and on May 21, 1987, placed in an outside surveillance training course. The on-site training at the Golden Nugget, included access to the

monitor room. The requisite eighty (80) training hours were completed by Mr. Weiss on June 3, 1987. The position addition and work permit delineating specific job responsibilities was not obtained from the Commission by, for, or on behalf of Mr. Kovach until July 8, 1987. A copy of the June 16, 1987 license inquiry printout is attached hereto, and incorporated herein as Exhibit "E".

5.A. Katherine Chudzinski, casino employee license #67062-21, was hired by GNOC on June 27, 1986 as a parking cashier, and on May 11, 1987, placed in an outside surveillance training course. The on-site training at the Golden Nugget, included access to the monitor room. The requisite eight (80) training hours were completed by Ms. Chudzinski on May 27, 1987. The position addition and work permit delineating specific job responsibilities was not obtained from the Commission by, for, or on behalf of Ms. Chudzinski until July 8, 1987. A copy of the June 16, 1987 license inquiry printout is attached hereto, and incorporated herein as Exhibit "F".

5.B. Golden Nuggett's surveillance department relied upon a procedure for surveillance positions as stated in the attached exhibits G & H, attached hereto and incorporated as the said exhibits.

ISSUES

The issues remaining to be resolved are:

(1) Whether GNOC violated N.J.S.A. 5:12-90a, 106a and 117b and N.J.A.C. 19:41-1.3b by employing Sharon Fate and Elijah Torrence without the appropriate casino employee licenses and, if so, what penalty or remedial action is appropriate;

(2) Whether the respondent violated N.J.S.A. 5:12-106, 117c and N.J.A.C. 19:4-1.7 by permitting Frank Kovach, Jay Weiss, and Katherine Chudzinski to work as trainees in site surveillance in the monitor room without the necessary position addition and work permit and, if so, what penalty or remedial action is appropriate.

DISCUSSION AND CONCLUSIONS OF LAW

As part of the stipulation, the parties also agreed that the following pertinent provisions of the Casino Control Act were effective at all times referenced in the complaint:

> No person may commence employment as a casino employee unless he is the holder of a valid casino employee license. N.J.S.A. 5:12-90a

> A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. Prior to the effective date of such appointment or employment, the casino licensee shall apply for a work permit for such employee, which shall be granted by the commission if the employee is registered or is the holder of a current and valid license. The casino licensee shall return such work permit to the commission within 5 days of the termination or cessation of such appointment or employment for any cause whatsoever. Each work permit shall be renewed annually in accordance with rules and regulations promulgated by the Commission N.J.S.A. 5:12-106a.

> A casino licensee shall, within 24 hours of receipt of written notice thereof, terminate the appointment or employment of any person whose license or registration has been revoked or has expired. A casino licensee shall comply in all respects with any order of the Commission imposing limitations or restrictions upon the terms of employment or appointment in the course of any investigation or hearing. N.J.S.A. 5:12-1060b.

> Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this Act in a position whose duties require a license or registration under the provisions of this Act is guilty of a misdemeanor and subject to no more than three years inprisonment or a fine of $10,000 or both and in the case of a person other than a natural person to a fine of not more than $50,000 N.J.S.A. 5:12-117b.
>
> Any person who employs an individual without obtaining a work permit as required by this act, is guilty of a misdemeanor and subject to not more than three years' imprisonment or fine or not more than $10,000 or both, and in the case or a person other than a natural person, to a fine of not more than $50,000 N.J.S.A. 5:12-117(c).

THE VIOLATIONS

The parties do not dispute that the conduct set forth in the stipulation of facts constitutes a violation as charged and I, therefore, **CONCLUDE** that GNOC violated N.J.S.A. 5:12- 106a and 117b as well as N.J.A.C. 19:41-1.3b by employing Sharon Fate and Elijah Torrence without the appropriate casino employee licenses. I further **CONCLUDE** in light of the undisputed facts that respondent, GNOC violated N.J.A.C. 5:12-106, 117c and N.J.A.C. 19:41-1.7 by permitting Frank Kovach, J. Weiss and Katherine Chudzinski to work as trainees in the onsite surveillance in the monitoring room at the casino.

Respondent, GNOC argues that the Division has not properly pled the alleged violation of N.J.S.A. 5:12-90a against the respondent casino licensee. The Division did not address this issue in its brief and filed no response to GNOC's statement in lieu of brief. The respondent licensee maintains that N.J.S.A. 5:12-90a prohibits individuals from commencing employment with casinos unless they hold the required license but does not impose responsibility on casinos. There is no basis, GNOC argues, for holding a casino licensee liable under the theory of respondeat superior because N.J.S.A. 5:12-90a does not proscribe conduct of the casino licensee, which is dealt with by other prohibitions contained in the act and regulations. See, N.J.S.A. 5:12-106a, 117b; N.J.A.C. 19:41-1.2e. GNOC cites in support of In the Matter Department of Public Safety, Division of Gaming

Enforcement v. GNOC, Corp. t/a Golden Nuggett Hotel and Casinon, OAL DKT. NO. CCC 4727-87 (decided April 25, 1988) which was adopted by the Casino Control Commission on June 8, 1988. In that decision, ALJ Voliva concludes that N.J.A.C. 5:12-90a is not applicable to casino licensees. I agree with that conclusion and the analysis set forth in that opinion and reach a similar conclusion here. The Casino Control Act holds casinos directly liable for employing unlicensed or unregistered persons. See N.J.S.A. 5:12-106a and 117b, c. The Act also imposes a separate and distinct prohibition barring persons from working for casinos without the appropriate licenses or registrations N.J.S.A. 5:12-90a and 117a. The intent of the Act, therefore, is to separately prohibit unlicensed employees from working for casinos and to bar casinos from hiring them. On that basis, I **CONCLUDE** that N.J.S.A. 5:12-90a does not apply to casino licensees and that allegations of violations of this section must be dismissed as to GNOC. The licensee is liable under N.J.S.A. 5:12-106 and 117.

THE PENALTY

N.J.S.A. 5:12-129, 130 provide for various penalties and/or sanctions which can be imposed against the license or any person who has committed a violation of the Act. Here the Division seeks the imposition of a monetary penalty of $10,000.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activity;

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

The casino industry is subjected to strict oversight and rigorous regulation to protect the integrity of gaming operations and promote public confidence. N.J.S.A. 5:12-

1b(6); In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. City of Margate, 86 N.J. 374, 380-381 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328 (1981), 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as mod. 90 N.J. 361 (1982), app. dism. 459 U.S. 1081 (1981).

The Division argues that a $10,000 civil penalty should be imposed on GNOC due to the nature of the violations and based on the fact that respondent could have easily complied with the Act by filing for the appropriate temporary licenses and position additions. It also stresses the highly sensitive nature of the surveillance department to which GNOC allowed access to Kovach, Weiss, and Chudzinski without the necessary position additions and work permits. The Division contends that the misconduct created a significant potential for other regulatory transgressions and could have been easily corrected had GNOC not taken such a "sloppy and inattentive approach" to obtaining the required licenses and position additions. In support of the $10,000 penalty, the Division cites prior similar violations by GNOC, as well as other comparable cases and argues that the penalty is appropriate as a deterrent to ensure future compliance.

Respondent GNOC rejects the proposed penalty because the violations pose no risk to the public or to the integrity of gaming operations. Specifically, GNOC argues that the job responsibilities of the Assistant VIP Services Manager, Sharon Fate, a casino hotel registrant who functioned for eleven weeks in a position requiring a casino employee license, did not involve gaming activity or any risk to the public. The second count, concerning a public area attendant, Elijah Torrrence, who worked for approximately sixteen weeks after failing to renew his casino employee license, was, GNOC argues, an unintentional oversight by the licensing department and did not involve gaming activity. As to the three employees cited in Count 3 for having access to the in-house monitoring room without the appropriate position additions, GNOC cites "confusion" on the part of the surveillance department concerning procedures to be followed and denies that it intentionally sought to mislead the Commission or Division as to the trying of its surveillance trainees. In particular, GNOC claims that it relied on procedure approved by the staff of the Commission for in-house monitor room training. See, Exhibits G and H attached to the stipulation of facts. The respondent rejects the Division's claim that it has a track record of similar violations and distinguishes other cases relied on as involving more serious violations.

I agree with the Division that a penalty is warranted under the circumstances but recommend that the proposed assessment of $10,000 be reduced to a $7500 penalty because of respondent GNOC's reliance on procedures apparently approved by Commission staff and corrective actions. The risk to the public and to the integrity of gaming operations created by the conduct of GNOC in having unlicensed employees in various positions, including ones with access to sensitive security areas of the casino, was substantial and not a mere technical or paperwork oversight. Even the position of VIP Services Manager, which was occupied by an employee without a casino employee license, involves matters touching on the fiscal integrity of the casino's operation in the area of VIP complimentaries. The conduct of the licensee was also serious in the sense that unlicensed persons were allowed access to the in-house monitor room at the casino which is the nerve center of surveillance operations. Both of these areas are sensitive and fraught with possible misconduct and damage to casino operations. It is also clear that the violations were known to (or easily known by) the company. The Division has not proved that these violations were purposeful in the sense of willful disregard of the provisions of the Act, but the element of knowledge has been established, notwithstanding GNOC's claim of innocent administrative mistake. That justification or excuse is not particularly persuasive. GNOC's excuse with respect to the purported Commission Staff approval of its procedure on surveillance employees is somewhat mitigating and has been considered in recommending a reduction in the proposed penalty from $10,000 to $7500. No further reduction is warranted, however, because of the casino's prior violations in the area of unlicensed employees as set forth above. GNOC has undertaken some corrective action to prevent these violations from recurring and that factor was also considered in mitigation as to the reduction of the proposed penalty. There is also no evidence that these violations led to other regulatory violations, although the potential for further serious violation was there.

Having considered all of the factors set forth in N.J.S.A. 5:12-130, I **CONCLUDE** that a monetary sanction is warranted and recommend that a penalty of $7500 be imposed for these infractions.

DISPOSITION

It is **ORDERED** that the complaint is DISMISSED insofar as it alleges violation of N.J.S.A. 5:12-90a against GNOC and further **ORDERED** that GNOC Corp., t/a the Golden Nuggett Hotel and Casino shall pay a civil administrative penalty in the amount of $7500.

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

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

Nov. 1, 1988
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

11-2-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 4 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESSES

None

EXHIBITS

FOR THE PETITIONER:

Brief and attachment submitted by the Division

FOR THE RESPONDENT:

Stipulation of Facts with attachments A through H.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-160
OAL DOCKET NO. CCC 00162-88
ORDER NO. 89-14-22

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

Complainant,

v.

GNOC CORPORATION,
t/a BALLY'S GRAND HOTEL AND CASINO,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 29, 1989,

IT IS on this 11th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of $50,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 162-88
AGENCY DKT. NO. 88-160

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GNOC, CORP.,
t/a BALLY'S GRAND HOTEL & CASINO,
Respondent.

Christopher Pitts, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Latha A. Gilliam, Esq., for respondent

Record Closed: January 3, 1989 Decided: February 16, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on December 8, 1987, alleging that the respondent implemented revised presumptive hearing dates for checks submitted by gaming patrons on March 13, 1986, without obtaining prior approval of the Casino Control Commission, contrary to N.J.S.A. 5:12-99a(13) and b; N.J.A.C. 19:45-1.3(c) and N.J.A.C. 19:45-1.28(e). These are the issues:

1. Was the respondent required to obtain approval of the Casino Control Commission prior to impiementing revised presumptive clearing dates for checks submitted by gaming patrons, and has the respondent violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), and N.J.A.C. 19:45-1.28(e), by implementing its revised presumptive clearing dates in or about March 1986, without such approval.

2. Is the petitioner's complaint barred by the doctrine of waiver.

PROCEDURAL HISTORY

The Division's complaint was filed with the Casino Control Commission on December 8, 1987. The respondent's notice of defense and request for a hearing was filed with the Commission on January 7, 1988. The Commission transmitted the matter to the Office of Administrative Law on January 14, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was conducted on March 7, 1988. Thereafter, hearing sessions were held on July 18, September 2, and September 26, 1988, in the Atlantic County Civil Courthouse. At the completion of the hearing, the record remained open to permit the parties to file post-hearing submissions. The scheduled for submissions was subsequently extended at the request of the parties for good cause shown. When I determined that the parties had completed their submissions and no further replies would be received, the record in this matter was closed on January 3, 1989.

FINDINGS OF FACT

The facts material to the resolution of this matter are essentially undisputed. The first witness to testify was Richard Carretta, Supervising Agent for the Division of Gaming Enforcement Audit Section. He has been an employee of the Division for over nine and one-half years and he is familiar with investigations regarding the respondent. Agent Carretta has supervised field agents and has reviewed their reports and documentation.

Prior to opening for business, each casino must submit its system of internal procedures and accounting controls for approval by the Casino Control Commission. These submissions are reviewed both by the Commission and the Division.

According to Agent Carretta, if the Division staff believes that the submission in some way does not conform with the requirements of the Casino Control Act and regulations, a joint letter from the Division and Commission will be sent to the casino. Casinos usually respond to joint letters by making the necessary alterations and resubmitting the revised procedures. If the agency staffs continued to find insufficiencies, a second joint letter would be sent. Agent Carretta testified that if the Division staff feels that the casino is in compliance, the Division will send a "no objection" letter. After initial approval, changes in the casino's system of internal procedures and accounting controls can be submitted for approval on a piecemeal basis.

The respondent GNOC is the successor in interest to GNAC, Corp., t/a The Golden Nugget Hotel Casino. Agent Carretta identified page 143 of the GNAC system of internal control submitted to the Commission in November 1980 (Exhibit P-1). This page concerns the casino's procedures for handling counter checks received from gaming customers, pursuant to N.J.A.C. 19:45-1.28. Agent Carretta recalled that he reviewed this internal control procedure when it was submitted and it was approved shortly after November 1980 and prior to the initial opening of the casino. The final paragraph on page 143 concerns presumptive clearing dates for checks submitted by patrons. It states:

> Any check deposited into a bank will not be considered clear until a reasonable time has been allowed for such check to clear the bank. See Statement of Management Policy No. Twenty-Three.

Statement of Management Policy No. Twenty-Three (Exhibit P-2) is entitled Presumptive Clearance of Checks Deposited. Agent Carretta explained the significance of the presumptive clearance dates. When the prescribed number of days have passed following deposit of the patron's check, it will be presumed that the check has cleared through the banking system and will be honored by the bank upon which it is drawn. At that point, a patron could again draw down on his line of credit at the casino by submitting another counter check, whether or not the previous counter check had actually cleared through the banking system. Thus, the shorter the presumed clearance times for patrons checks, the sooner those patrons could again draw down on their credit. The statement of management policy which was referenced on page 143 of the System of Internal Control provided for presumed clearance of checks from banks in New Jersey in seven calendar days. Checks from banks in the states of Connecticut, Delaware, Maryland, Massachusetts, New York, Pennsylvania, Rhode Island, and Virginia, as well as Washington, D.C.,

were presumed to have cleared in ten calendar days. Checks from banks in all other states were presumed to have cleared in 14 calendar days (Exhibit P-2).

According to Agent Carretta, the foregoing are the presumptive clearance dates which were actually implemented by GNAC. However, those time periods were not the presumptive clearance dates being used by the respondent at the time of Agent Carretta's testimony. Agent Carretta identified the respondent's Statement of Management Policy No. Fourteen, which was previously Statement No. Twenty-Three (Exhibit P-3). This statement reduced the presumptive clearance time for checks from banks in New Jersey from seven calendar days to 5 banking days. The presumptive clearance time for checks from banks in nearby states was reduced from ten calendar days to seven banking days. The presumptive clearance time for checks from banks in all other states was reduced from 14 calendar days to 10 banking days. The presumptive clearance time for checks from banks in foreign countries would be 25 banking days. Agent Carretta also identified a letter from Henry Hornbostel, then vice president and treasurer of GNOC, to the Casino Control Commission, dated January 31, 1985 (Exhibit P-4). Agent Carretta described this as a fairly typical cover letter for a casino's proposed internal control submission revision. This letter states in part:

> As suggested in Ms. Hetzel's letter of August 14, 1984, we have reviewed our statements of management policies and where appropriate, have incorporated the same into our internal control submission. This was accomplished by the inclusion of the necessary language directly in the internal control submission or via appendices.

Page 120 of the respondent's System of Internal Control, revised January 31, 1985, was admitted into evidence as Exhibit P-5. This page again deals with counter checks received from gaming customers pursuant to N.J.A.C. 19:45-1.28. The respondent continues to state that a check deposited into a bank will not be considered clear until a reasonable time has been allowed for such check to clear the bank. However, reference to Statement of Management Policy No. Twenty-Three is to be deleted and the following is added: "GNOC shall submit to the Commission and Division the time allotted for checks to clear the bank." Agent Carretta recalled that the respondent had resubmitted its entire set of internal controls to the Commission in January 1985. Page 120 of the submission (Exhibit P-5) was never approved by the Commission.

According to Agent Carretta, the respondent implemented a further revision of its presumptive clearance dates. Exhibit P-6 is a revised copy of Management

Policy No. Fourteen dated March 3, 1986. This revision circulated internally by the respondent provides for presumed clearance of checks from banks in New Jersey and nearby states in three banking days. Checks from banks in all other states are presumed to have cleared in five banking days. Checks from banks in foreign countries are presumed to have cleared in 25 banking days (Exhibit P-6).

By letter dated March 3, 1986 (Exhibit P-7), the respondent submitted to the Commission the revision of the respondent's policy regarding time allotted for checks to clear the bank. The revised times for presumed clearance as submitted were 3, 5, and 25 banking days, as set forth above (Exhibit P-6). The respondent began implementing the newest revision of presumptive clearance dates in March 1986 (Exhibits P-6 and P-8). According to Agent Carretta, the revised clearance days of 3, 5, and 25 banking days were the clearance times which the respondent was utilizing at the time of his testimony. The respondent's revised presumptive clearance dates were substantially shorter than the dates utilized by other casinos in Atlantic City.

By letter to the Commission staff dated May 13, 1986 (Exhibit P-9), the respondent's senior financial manager, then Leo Previti, advised that the respondent's recent reduction in presumptive clearing dates reflected a move by the Federal Reserve Board requiring banks to make funds available and give notification of nonpayment in a more timely fashion. This letter indicated that the matter had been discussed with the respondent's depository bank, First Fidelity, prior to the respondent initiating the reduction in its clearing dates. By letter to the respondent's general counsel dated August 6, 1986 (Exhibit P-10), the Commission's deputy director for operations, Deno R. Marino, advised that the Commission and Division of Gaming Enforcement staffs had reviewed the respondent's proposal to reduce its presumed clearance dates. Agent Carretta testified that he had provided some input for Deputy Director Marino's letter. This letter stated that the availability of funds is not the determining factor to be considered when reducing presumptive clearance dates. Rather, the determining factor is "the length of time it takes to receive notification of non-payment." Geographic distance between the drawer bank and the respondent's bank of deposit, and the method of notification used by the drawer bank, will impact on the length of time it takes to receive such notification. Deputy Director Marino stated that the staffs recommended that the respondent extend its presumptive clearance times beyond three and five days, or provide evidence to indicate that notification of non-payment "is being received within such time frame."

Agent Carretta testified that he was aware of an internal study performed by GNOC to see how long it was taking to actually receive notice of returned items. He identified an internal memo (Exhibit P-13) from Leo Previti to GNOC Collections Manager Harvey Weiss dated August 19, 1986, which suggested that a sample of recent returned items be taken and which asked for Mr. Weiss' "feeling as to how often 'we get burned' by clearing a patron's line in the Presumptive Clearing Time and then using additional credit prior to receiving notice that the 'cleared' item has returned."

Agent Carretta identified a handwritten notation on the bottom of the foregoing internal memo. The note was directed to Henry Applegate, GNOC's Senior Vice President, Finance and Administration, from Henry Hornbostel, GNOC Vice President and Treasurer. It stated, "without statistics, my gut is that the average return date is substantially in excess of our clearance schedule."

Agent Carretta also identified a random sample of returned checks received by GNOC which was prepared by Harvey Weiss and Leo Previti (Exhibit P-14). Thirteen checks returned to GNOC between August 8 and August 15, 1986, were sampled. The checks were drawn by patrons residing in New York, New Jersey, Texas, Michigan, Massachusetts, Florida, Pennsylvania, Illinois, and Canada. None of the checks selected by GNOC in its random sample were returned within its three-and-five day presumptive clearance periods. In fact, the check drawn by the New Jersey patron took seven banking days to return (Exhibit P-14). Agent Carretta noted that the return dates in excess of the presumptive clearance dates allow patrons credit which they would not otherwise have.

By letter dated November 20, 1986 (Exhibit P-11), GNOC responded to the Commission's staff letter of August 6, 1986 (Exhibit P-10). Marilu Marshall, vice president regulatory administration and general counsel, stated in this letter that GNOC's decision to reduce the presumptive clearance dates was due to the "increased emphasis within the banking community placed on reducing check clearing times." She noted that the Federal Reserve Board adopted an amendment to Regulation "J" which established new notification requirements for financial institutions returning large dollar items. Institutions of first deposit now know much sooner that a large unpaid item is being returned, according to Ms. Marshall. She further stated in her letter that GNOC had requested that its depository bank, First Fidelity, provide the GNOC Collection Department with information on

returned items of $2,500 or larger by telephone at the time the bank received the required Regulation "J" notification.

Agent Carretta identified a report of an interview of Freda Koernig, Assistant Vice President First Fidelity South, conducted by Division Agent Tadd Hansen on April 15, 1988 (Exhibit P-12). According to the report, the purpose of the informal interview was to determine the return item notification policy of First Fidelity South as it relates to GNOC. Ms. Koernig stated to Agent Hansen that there is no written or verbal agreement between the bank and GNOC which addresses notification of returns. The bank's casino services department on occasion receives notification by telephone from an outside bank that an item will be returning. When such telephone notification is received, the bank will call the casino's collections department. Agent Hansen reported that Ms. Koernig stated telephone notification is not received very often and that when it is, it is usually from smaller banks that are not familiar with casino counter checks (Exhibit P-12).

By letter to Casino Control Commission Chairman Walter N. Read dated September 18, 1987 (Exhibit P-15), the Division of Gaming Enforcement restated its position that the respondent had not yet established proof that its presumed clearing dates were justified. By letter to respondent's counsel dated September 28, 1987 (Exhibit P-16), Commission Deputy Director Marino advised that it was the opinion of the Commission and Division staffs that the respondent had not adequately addressed and supported the reasonableness of its proposed clearance times for checks deposited. The letter further stated:

> . . . It is the opinion of staffs that the proposed clearance times of three or five banking days for their respective geographical locations does not allow sufficient time for the following:
>
> 1. The patron's check to reach the drawer bank, due to geographical distance between the bank of deposit and drawer bank; and
>
> 2. The bank of deposit to receive notification of non-payment from the drawer bank due to the different methods of notification used by drawer banks.
>
> For the reasons listed above, GNOC, CORP.'s proposed presumptive clearance times of three and five days are unacceptable and GNOC, CORP. must, therefore, remain in compliance with its previously approved Submission.

A document entitled Table of Contents, Statement of Management Policies, was admitted into evidence as Exhibit P-17. Agent Carretta testified that many of the topics listed in the respondent's Statement of Management Policies fell under N.J.A.C. 19:45, accounting and internal controls. He believes that the respondent contemporaneously submitted its Statement of Management Policies with its initial internal control submission to the Casino Control Commission in November 1980. Agent Carretta also identified a letter to the Commission's Division of Financial Evaluation and Control from Alfred J. Luciani, GNAC's Executive Vice President and Managing Director, dated April 6, 1983 (Exhibit P-18). This letter bears the reference, "GNAC System of Internal Control -- Volume III Statement of Management Policies." This letter states:

> Enclosed please find a copy of GNAC System of Internal Control -- Volume III - Statement of Management Policies.
>
> Please be advised that policies no. 5 and no. 35 are in the process of being revised, and will be forwarded upon completion.
>
> I would appreciate your reviewing the enclosed, except for policies no. 5 and no. 35, and provide me with your comments.

Agent Carretta testified concerning an example of the over extension of credit to a gaming patron when presumptive clearing dates are too short. As of March 19, 1988, Patron Sonny Homasi had a $20,000 line of credit with the respondent. The Division investigation revealed that Mr. Homasi drew three counter checks totalling $15,000 at Bally's Grand on March 19, 1988. The credit available on his approved credit limit of $20,000 was thus $5,000 (Exhibits P-19 and P-20). The three counter checks drawn by the patron were deposited on March 21, 1988. Three days later, the respondent casino "presumed" that the checks were clear in accordance with its presumptive clearing dates, as if the items had been paid.

As a result of presuming that the three counter checks had cleared, the respondent reduced Mr. Homasi's outstanding balance to zero, returning his available credit to $20,000. On March 26, 1988, Mr. Homasi drew three more counter checks totalling $20,000. However, on April 5, 1988, the three counter checks drawn by the patron on March 19, 1988, as well as the three counter checks drawn on March 26, 1988, were returned unpaid, for insufficient funds (Exhibits P-21, 22 and 23). As a result, Mr. Homasi had a credit debt of $35,000 at Bally's Grand on April 5, 1988, although his approved credit limit was only $20,000.

Bally's Grand Senior Vice President and Chief Operating Officer Henry M. Applegate, III testified that he was involved in the preparation of the respondent's initial internal control system and that he is familiar with the Statement of Management Policies. According to Mr. Applegate, the Statement of Management Policies was developed on the advice of counsel, Alfred Luciani. Its purpose was to permit changes in policy without having to wait up to 90 days for the Division and Commission to make a determination concerning proposed changes, as would be required with alterations to the respondent's System of Internal Control. He noted that several binders had initially been sent to the Casino Control Commission. One contained the System of Internal Control and a separate binder contained the Statement of Management Polices.

Mr. Applegate identified a letter dated August 14, 1984 (Exhibit R-1) which he received from Patricia Hetzel, manager of the Commission's Casino Accounting and Operations Unit. The letter confirms a conversation in regard to a recommendation from outside accountants that the respondent "file appropriate amendments to its internal control submission to reflect current GNOC practices which were not accurately reflected in the submission on file with the Commission." Ms. Hetzel confirmed the representation of Mr. Applegate and Mr. Hornbostel that they were aware that the respondent's internal control submission and accompanying statements of management policies were in need of revision. Ms. Hetzel further stated:

> In order to expedite the review of the Submission, I would like to reiterate that a cursory review of the Management Policies leads me to conclude that a substantial portion of that material need not be formally included in your revised Submission. As I indicated, my staff will complete its review of the most recent Management Policies and supply you with our determination of what material is extraneous. Any material which is deemed appropriate for formal submissions should then be incorporated into the Internal Control Submission per se, effectively eliminating the Statements of Management Policies.

Mr. Applegate testified concerning his understanding of N.J.A.C. 19:45-1.28(e), which was referenced by page 143 of the respondent's initial System of Internal Control dated November 24, 1980 (Exhibit P-1). Mr. Applegate felt that the regulation required a casino to submit a letter to the Commission and Division stating its presumptive clearance dates. However, he believed that the dates were not required to be set forth in the Internal Control Submission, but could be set forth in the Statement of Management Policies. A revision to the Statement of

Management Policies would not require comment, review, or approval by the Commission prior to implementation, in Mr. Applegate's opinion. He acknowledged that some of the matters set forth in the Statement of Management Policies may have required Commission approval before implementation, while maintaining that some other matters may not have required such approval.

Vice President of Finance and Administration Henry W. Hornbostel testified that he understood the Statement of Management Policies to be a separate elaboration of the formal N.J.A.C. 19:45 Internal Accounting Control submission. The Statement of Management Policies were physically in a separate binder and Mr. Hornbostel was informed that they were not part of the internal control submission to allow management flexibility for implementing changes. This understanding was not based on any discussion with the Casino Control Commission or Division of Gaming Enforcement staffs; rather, it was based on internal discussions.

Mr. Hornbostel testified that he believed the presumptive clearance dates of three and five banking days (Exhibit P-6) implemented by the respondent in March 1986 were generally reasonable. He explained that the assignment of presumptive clearing dates is somewhat arbitrary and that he considered the factors for determining reasonableness to include the amount of past returns, the banking relationship, and the uncollectability ratio, compared with other casinos. He described setting presumptive clearance dates as a business decision; part of the credit decision a casino makes. Mr. Hornbostel acknowledged that the respondent has no written agreement with First Fidelity which requires it to give notification to the respondent for a returned item. However, it is his belief that First Fidelity does call the casino many times when it receives such notification.

Collections Department Manager Harvey Weiss testified that he is familiar with the presumptive clearing times assigned to patron's checks. He acknowledged that he conducted a random sample of selected returned counter checks (Exhibits P-13 and P-14). According to Mr. Weiss, in August 1986 the respondent's depository bank always called with notification of a returned item of a substantial nature. This would be a returned check in an amount over $15,000 or $20,000. He acknowledged that no log of these calls was maintained.

Bally's Grand Credit Manager Sandra Washuta testified that she is familiar with changes which the respondent has made in its presumptive clearing dates. In

January 1988 Ms. Washuta sent a memo to respondent's information services department directing necessary changes in computer programming to implement a revision of presumptive clearing dates back to 5, 7, 10 and 25 banking days, depending on geographic location (Exhibit R-2). According to Ms. Washuta, the changes were being made because Mr. Applegate had said there was a problem with the state and the casino should go back to the old dates voluntarily. Because of difficulties with the program change, it was not completed until May 12, 1988.

Ms. Washuta also testified concerning a random study of returned items between January and May 1988 (Exhibit R-3). Although the survey spanned 91 deposit days, records for 23 of those days were not readable. Of 5,719 items deposited, 346 items were returned unpaid. In regard to the returned items, 17 patrons were allowed on 25 occasions to again draw on their lines of credit before their checks had returned unpaid.

John Licciardello and Julie Lear Ingraldi also testified on behalf of the respondent. He is computer operations manager at Bally's Grand and she is the user representative in information services. Ms. Ingraldi acts as a liaison between the programming staff and computer users throughout the casino and hotel. Both witnesses testified that it took from January to May 1988 to implement the increase in presumptive clearance dates because of a limited programming staff and a desire to be sure the program was working correctly before it was implemented. Both witnesses testified that a good faith effort had been made to bring about the changes as quickly as possible.

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

CONCLUSIONS OF LAW

The primary issue in this matter is whether the respondent has violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), and N.J.A.C. 19:45-1.28(e) by implementing in March 1986 its revised presumptive clearing dates for checks submitted by gaming patrons, without first obtaining Casino Control Commission approval. The Division of Gaming Enforcement contends that any changes to the respondent's presumptive clearing date schedule were required to be submitted to the Commission and Division and approved by the Commission prior to implementation of the changes. The Division argues that its position is supported by a plain reading of the Casino

Control Act and implementing regulations, by analysis of legislative intent, and by established legal precedent.

It is the respondent's position that its schedule of presumptive clearing times for checks submitted by gaming patrons was maintained in its Statement of Management Policies, separate and apart from its internal control submission. The respondent contends that it was free to implement changes in its Statement of Management Policies without first obtaining Commission approval. The respondent argues that it was only required to submit its schedule of presumptive clearing dates to the Commission and Division, and that having done so, it was not in violation of the act or regulations.

The respondent also argues that the Division's complaint is barred by the doctrine of waiver. According to the respondent, the Commission and the Division had full knowledge that the respondent maintained its Statement of Management Policies separate and apart from its internal control submission. The Commission and Division also knew that the respondent sets forth its schedule of presumptive clearing times for patron's checks in its Statement of Management Policies. Nevertheless, neither the Commission nor the Division ever advised the respondent that the Statement of Management Policy concerning presumptive clearing times for patron checks should be included as part of the respondent's system of internal procedures and administrative and accounting controls. The Division contends that the respondent's claim of waiver is factually unsubstantiated and is legally unsupportable. Thus, it argues that there has been no waiver and that its complaint should not be barred.

Section 99 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) provides in pertinent part:

> a. Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submissions shall be made at least 120 days before gaming operations are to commence or at least 90 days before changes in previously submitted control plans are to become effective, unless otherwise directed by the commisison. 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. . . .

N.J.A.C. 19:45-1.3 further describes the procedures for a casino licensee submitting to the Commission and Division a description of its system of internal procedures and administrative and accounting controls as part of its requirement under section 99. N.J.A.C. 19:45-1.3(c) provides that any changes to the system of internal procedures and administrative and accounting controls shall be submitted to the Commission and Division at least 90 days before the changes are to become effective, unless otherwise directed by the Commission. This regulation further states, "no casino licensee shall alter its internal controls unless and until such changes are approved."

N.J.A.C. 19:45-1.28 sets forth the required procedures for depositing checks received by a casino from its gaming patrons. N.J.A.C. 19:45-1.28(e) states:

> Any check deposited into a bank will not be considered clear until a reasonable time has been allowed for such check to clear the bank. The licensee must submit to the Commission and Division the time allotted for checks to clear the bank.

The inclusive nature of the submission and approval process for a casino's system of internal procedures and administrative and accounting controls should be apparent on the face of the foregoing statutory and regulatory provisions. Section 99 of the act describes no less than 17 broad categories of internal procedures and controls which must be set forth in a casino licensee's submission. If its internal control system includes other procedures, these must be submitted for approval as well.

The setting of presumptive clearing dates is not an insignificant matter. N.J.A.C. 19:45-1.28(e) requires that any check deposited into a bank by the casino licensee not be considered clear until a reasonable time has been allowed for such check to clear the bank. As demonstrated by the undisputed evidence in the record, the presumptive clearing dates employed by a casino impact directly upon the issuance of casino credit, since presumptive clearing of a dishonored check prior to its actual return has resulted in patrons being able to draw additional counter checks in access of their approved credit limits. Casino credit may be issued to a gaming patron only under a limited set of circumstances described in N.J.S.A. 5:12-101 and the regulations adopted thereunder. In State of New Jersey v. Boardwalk Regency Corp., OAL DKT. NOS. CCC 7452-82 and CCC 6325-81 (October 21, 1982);

Commission Final Decision dated January 4, 1983, the Casino Control Commission described the intent of the statutory and regulatory language concerning the extension of credit to gaming patrons:

> [T]he clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in these operations. See, Resorts International Hotel, Inc. v. Salomone, 78 N.J. Super. 598 (App. Div. 1981). . . The regulations promulgated under section 101 are equally detailed in their requirements for the extension and control of credit. See, N.J.A.C. 19:45-1.25 to 1.30, [at 11 and 12].

The material connection between the setting of presumptive clearance dates and the extension of credit to gaming patrons is undeniable. Thus, the setting of presumptive clearance dates must be undertaken in furtherance of the clear legislative purpose to impose strict regulation and control over the extension of credit. This legislative purpose would be defeated if the reasonableness of the presumptive clearance dates selected by a licensed casino were not subject to review and approval by the Casino Control Commission. Accordingly, I **CONCLUDE** that N.J.A.C. 19:45-1.28(e) requires the respondent to submit to the Commission for review and approval the times which the respondent has allotted for patron checks to clear the bank.

The submission and approval procedures which N.J.A.C. 19:45-1.28 must be read to require are in accordance with the comprehensive and inclusive requirements of section 99 of the act. Under this section each casino licensee must submit to the Commission for its review and approval the licensee's description of all of its internal procedures and administrative and accounting controls. Alterations in these internal procedures and controls may not be implemented unless the alteration is approved by the Commission. As noted above, these requirements are set forth in the detailed regulations adopted by the Commission. N.J.A.C. 19:45-1.3(c). Based upon the foregoing discussion, I **CONCLUDE** that the respondent has violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), and N.J.A.C. 19:45-1.28(e) by implementing in March 1986 its revised presumptive clearing dates for checks submitted by gaming patrons, without first obtaining approval of the Casino Control Commission.

The respondent argues that the Division's complaint in this matter is barred by application of the doctrine of waiver. According to the respondent, it and its predecessor corporation maintained the Statement of Management Polices

separate and apart from its internal control submission since November 1980, and that this was done "with the full knowledge and acknowledgment of the Casino Control Commission, as well as the Complainant, Division of Gaming Enforcement." The respondent asserts that its presumptive clearing times for patron's checks at all relevant times were maintained, with the knowledge of the Commission and Division, in the respondent's Statement of Management Policies. The respondent contends that it was never advised by the Commission or the Division that its Statement of Management Policy concerning presumptive clearing times for patron checks should be included as part of its internal procedures and administrative and accounting controls and submitted to the Commission for approval. The respondent argues that as a consequence, the Division has intentionally relinquished its right to bring a complaint.

I do not accept the respondent's contentions. The Division commenced its investigation in this matter upon learning that the respondent had implemented its revised presumptive clearing dates (Exhibit P-24). By joint staff letters dated August 6, 1986 and September 28, 1987 (Exhibits P-10 and P-16), the respondent was informed that its "proposed" presumptive clearance times of three and five days were unacceptable and that the respondent "must, therefore, remain in compliance with its previously approved Submission."

In addition, the facts in this matter do not support the contention that the Division and Commission treated the respondent's Statement of Management Policies as existing separate and apart from its internal control submission. As illustrated by the letter of respondent's Executive Vice President and Managing Director Alfred J. Luciani to the Commission staff dated April 6, 1983 (Exhibit P-18), the respondent identified its Statement of Management Policies as Volume III of its System of Internal Control. The respondent's initial internal control submission cross-references the Statement of Management Policies and they were submitted simultaneously to the Commission.

Waiver is an intentional relinquishment of a known right. West Jersey Title and Guarantee Co., v. Industrial Trust Co., 27 N.J. 144, 152 (1958). The undisputed facts in this matter do not demonstrate that the Division of Gaming Enforcement has in any way relinquished its rights concerning the respondent's implementation of revised presumptive clearance dates. Thus, I **CONCLUDE** that the Division's complaint in this matter is not barred by application of the doctrine of waiver.

PENALTY

Section 129 of the Casino Control Act authorizes the Commission to impose a broad range of sanctions upon licensees who have violated any provisions of the act or regulations, or have committed other misconduct. Among the authorized sanctions is suspension of the operations certificate of any casino for violating any provisions of the act or regulations relating to the casino operation, including gaming, internal and accountancy controls and security. The Commission may also assess such civil penalties as may be necessary to punish misconduct and to deter future violations.

Section 130 of the act sets forth standards which the Commission shall consider in determining the appropriate sanction to be applied in a particular case. These standards are as follows:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated herein;

c. Any justification or excuse for such conduct by the licensee or registrant;

d. The prior history of the particular licensee or registrant involved with respect to gaming activity;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission and not to a finding of a violation itself.

The respondent argues that application of the foregoing criteria should not result in the imposition of any penalty. The respondent contends that its implementation of revised presumptive clearing times in March 1986 created no risk to the public or to the integrity of gaming operations. In addition, the respondent argues that its implementation of the revisions without Commission approval was not taken with knowledge that the respondent was violating the act or regulations. Rather, the respondent relied upon advice of counsel and belief that its Statement of Management Policies did not require the Commission's approval and that modifications in the respondent's presumptive clearing times only required notice to the Commission and Division. According to the respondent, its voluntary return to presumptive clearing times in effect prior to March 13, 1986, displayed its intention to fully comply with the requirements of the act and regulations.

The Division argues that a significant monetary penalty is appropriate, in recognition of the seriousness of the violations committed and the potential risks to the public and to casino operations occasioned by the use of unapproved clearing times. The respondent implemented its revised and unapproved presumptive clearing dates between March 13, 1986, and May 12, 1988, notwithstanding that it had twice been advised by Division and Commission staffs that its revision was inadequate.

The respondent's implementation of revised presumptive clearing times without Commission approval did create a risk to the public. Some gaming patrons were stripped of the protections afforded by a credit limit and were allowed to gamble beyond their apparent means. In addition, the Commission was denied its opportunity to review and determine the reasonableness of the presumptive clearance times. The failure to receive Commission approval is "in and of itself serious." State v. Resorts International Hotel, Inc., Agency Dkt. No. 83-5 (Commission Decision dated October 4, 1983). Resorts was assessed a civil monetary penalty of $10,000 by the Commission for transferring documents to an off-site location for storage prior to obtaining Commission approval for the removal of the documents, even though the Commission noted that the records had been maintained by Resorts in a reasonably safe facility with an indexing system and in a legible form. The Commission thus made clear that the approval process is crucial to maintaining the public confidence and trust in the integrity of the regulatory process, even when the unapproved procedure is safe.

The respondent actually revised its presumptive clearance dates on two occasions (Exhibit P-2 and P-8). The first revision was not even submitted to the Commission and Division, and was thus not approved by the Commission prior to the implementation. The second revision was implemented in March 1986 after submission to the Commission and Division, but without approval by the Commission. Despite correspondence from the Commission staff in August 1986 and September 1987 (Exhibits P-10 and P-16) which informed the respondent that its revised dates were "unacceptable," the respondent continued to utilize its revised and unapproved presumptive clearing dates until May 13, 1988.

The respondent should have known that its revised dates were unreasonable as a result of the survey conducted by its collections manager in September 1986 (Exhibit P-14). A random sample of 13 returned checks revealed that not one check actually returned unpaid within the time frames established by the respondent's revised presumptive clearing dates. The respondent's vice president and treasurer informed the senior vice president, finance and administration, that he felt the average return date was substantially in excess of the respondent's clearance schedule. In addition, the respondent had no formal agreement with its depository bank requiring the bank to immediately notify the respondent of a pending returned check. In the absence of such notification, a patron would be able to draw credit in excess of his approved credit limit prior to the actual return of a dishonored check.

The foregoing analysis of the sanction considerations under N.J.S.A. 5:12-130 establishes the seriousness of the respondent's violation of the act and regulations and demonstrates that a significant monetary penalty is warranted. For the respondent's violation of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), and N.J.A.C. 19:45-1.28(e), by implementing its revised presumptive clearing dates prior to obtaining approval of the Casino Control Commission, a monetary penalty in the amount of $50,000 should be imposed. I so **CONCLUDE**.

ORDER

Accordingly, it is **ORDERED** that the respondent GNOC Corp. t/a Bally's Grand Hotel and Casino, shall pay a civil monetary penalty in the amount of $50,000, pursuant to N.J.S.A. 5:12-129(5) and 130.

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

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

February 16, 1989 — Joseph F. Fidler
DATE — **JOSEPH F. FIDLER, ALJ**

Agency Receipt:

2/17/89 — Catherine Fox
DATE — **CASINO CONTROL COMMISSION**

Mailed to Parties:

FEB 22 1989 — Jayne LaVecchia/KS
DATE — **OFFICE OF ADMINISTRATIVE LAW**

jz

790

INVENTORY OF EXHIBITS

For the petitioner:

P-1 System of Internal Control, page 143

P-2 Statement of Management Policy No. 23

P-3 Statement of Management Policy No. 14

P-4 Letter dated January 31, 1985

P-5 System of Internal Control, page 120

P-6 Memo dated March 3, 1986

P-7 Letter dated March 3, 1986

P-8 Memo dated March 14, 1986

P-9 Letter dated May 13, 1986

P-10 Letter dated August 6, 1986

P-11 Letter dated November 20, 1986

P-12 Interview Report dated April 15, 1988

P-13 Memo dated August 19, 1986

P-14 Random Survey

P-15 Letter dated September 18, 1987

P-16 Letter dated September 28, 1987

P-17 Statement of Management Policy's Table of Contents

P-18 Letter dated April 6, 1983

P-19 Credit Application

P-20 Credit Transaction Report

P-21 GNOC Open Check Report

P-22 Counter checks

P-23 Credit transaction codes

P-24 Letter dated December 22, 1986

P-25 Petitioner's first set of interrogatories

P-26 Response to first set of interrogatories

P-27 Petitioner's interrogatories to Henry Hornbostel

P-28 Answers of Henry Hornbostel

P-29 Petitioner's interrogatories to Henry Applegate

P-30 Answers of Henry Applegate

P-31 Petitioner's second set of interrogatories

P-32 Answers to petitioner's second set of interrogatories

For the respondent:

R-1 Letter dated August 14, 1984

R-2 Memo dated January 28, 1988

R-3 Random study results, January 4 to May 12, 1988

WITNESSES

For the petitioner:

Richard Carretta

For the respondent:

Henry Applegate, III
Henry Hornbostel
Harvey Weiss
Sandra Washuta
Larry Buck
John Licciardello
Julie Lear
Ingraldi

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-252
OAL DOCKET NO. CCC 1996-88
ORDER NO. 89-15-22

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

Complainant, :

ORDER

v. :

GNOC CORPORATION, FORMERLY t/a :
THE GOLDEN NUGGET HOTEL AND CASINO,
:

Respondent.
:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of facts and settlement entered into by GNOC Corporation and the Division of Gaming Enforcement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of April 12, 1989,

IT IS on this 19th of April 1989, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty in the amount of $18,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /pm
DENNIS DALY

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 1996-88
AGENCY DKT. NO. 88-252

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
GNOC CORPORATION,
t/a THE GOLDEN NUGGET
HOTEL AND CASINO,
Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Kenneth F. Oettle, Esq., for respondent (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, P.A., attorneys)
Latha Gilliam, Esq., Corporate Counsel for respondent (on the Settlement)

Record Closed: January 31, 1989 Decided: February 8, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint on February 26, 1988 with the Casino Control

New Jersey is an Equal Opportunity Employer

Commission (Commission) alleging that respondent GNOC Corporation t/a The Golden Nugget Hotel Casino had violated N.J.S.A. 5:12-99 a. (1) and b., and N.J.A.C. 19:45-1.46 (b). The Division, therefore, seeks sanctions by way of penalty against respondent.

The matter was transmitted from the Commission to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On January 31, 1989, the undersigned was in receipt of a duly executed Stipulation of Facts and Settlement which resolves all issues in controversy and which provides in toto, as follows:

The above captioned matter having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter "Division"), by Nancy P. Scharff, Deputy Attorney General, and Kenneth F. Oettle, Esq. of Sills, Cummis, Zuckerman, Radin, Tischmann, Epstein & Gross, P.A., attorneys for respondent GNOC, Corp., t/a Bally's Grand, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

1. Complainant, by and through its Division of Gaming Enforcement, is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1 et seq. (hereinafter "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, GNOC, Corp. (hereinafter "GNOC") t/a Bally's Grand is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Respondent GNOC is the holder of a plenary casino license issued to it by the Commission, authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984 and GNOC conducted its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. GNOC is the holder of, and operates pursuant to, a Certificate of Operation effective May 1, 1984. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitled GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. Respondent GNOC is the successor in interest to GNAC, Corp. (hereinafter "GNAC"), which formerly traded as The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded to GNAC's interest as casino licensee as of May 1, 1984.

6. GNOC is a wholly-owned subsidiary of GNAC, which in turn is a wholly-owned subsidiary of Bally Manufacturing Corporation (hereinafter "Bally"). By means of a Purchase Agreement dated as of January 18, 1987, as amended February 28, 1987, all the outstanding stock of GNAC, among other property, was sold by Golden Nugget, Inc. to Bally, which thus became a holding company of GNOC.

7. On or about April 23, 1987, GNOC tendered a submission to the Division and Commission for approval of a proposed June 1987 "Glitter of Gold Giveaway" promotion.

8. By formal letter dated May 12, 1987, the Commission, through its staff, informed GNOC that the April 23, 1987 submission pertaining to the proposed June 1987 "Glitter of Gold Giveaway" required certain revisions. GNOC was advised to submit the revisions in writing to the Division and Commission. A copy of the May 12, 1987 Commission staff letter is attached hereto and incorporated herein as Exhibit "A".

9. On or about May 14, 1987, prior to receipt of the Commission's letter dated May 12, 1987, GNOC commenced its "Glitter of Gold Giveaway" promotion with the distribution and mailing of promotional literature. The program concluded on June 17, 1987, with a grand prize drawing.

10. By letters dated June 3 and June 5, 1987, GNOC amended its April 23, 1987 submission in response to the Commission's May 12, 1987 letter. Copies of the June 3 and June 5, 1987 submissions are attached hereto and incorporated herein as Exhibits "b" and "c", respectively.

11. By letter dated June 12, 1987, the Commission informed GNOC that no further review of the June "Glitter of Gold Giveaway" promotional submission would be undertaken due to the fact that the promotion commenced in May 1987, prior to receipt of GNOC of any approval from the Commission. A copy of the June 12, 1987 Commission letter is attached hereto and incorporated herein as Exhibit "D".

12. By reason of distributing and mailing promotional literature for the "Glitter of Gold Giveaway" before receiving Commission comments on

the program, GNOC conducted its June 1987 "Glitter of Gold Giveaway" promotion without the required approval of the Commission, and without the approval of the internal controls applicable to said promotion.

13. N.J.S.A. 5:12-99 (a) (1) states in pertinent part, as follows:

> Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 120 days before gaming operations are to commence or at least 90 days 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:
>
> (1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

14. N.J.S.A. 5:12-99 (b) provides for Commission review of all submissions required by the foregoing subsection (a) for a determination as to the sufficiency and adequacy of controls, and further provides... "No casino licensee shall commence gaming operations, or alter in fact its internal controls, unless and until such system of controls is approved by the commission."

15. N.J.A.C. 19:45-1.46 provides, in pertinent part, as follows:

> b. Detailed procedures controlling all programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to Commission and Division at least fifteen days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complementary items or services other than cash or slot tokens shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee.

16. By commencing the June 1987 "Glitter of Gold Giveaway" promotion prior to the receipt of Commission approval, as more fully described in paragraphs #7 through #11, GNOC committed violations of N.J.S.A. 5:12-99(a)(1) and (b) and N.J.A.C. 19:45-1.46(b) which impose an affirmative obligation upon the respondent to submit procedures regarding promotions to the Commission and the Division

fifteen days prior to implementing a promotion and to receive Commission approval prior to commencement of the promotion.

17. On June 10, 1987 the Division filed a complaint against GNOC (Docket No. 87-421) with the Commission, alleging that GNOC's March 1987 "Glitter of Gold Giveaway" promotional submission was submitted to the Commission four days after the promotion commenced and was therefore violative of N.J.S.A. 5:12-99 (a) and (b) and N.J.A.C. 19:45-1.46. A Stipulation of Facts and Settlement was entered by the parties and adopted by the Commission on June 21, 1988. Copies of the Commission's June 21, 1988 Order and the aforementioned Stipulation of Facts and Settlement are attached hereto and incorporated herein as Exhibits E and F, respectively.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;

2. In recognition of the above, GNOC will take corrective action to ensure that all future promotions are carefully monitored to ensure that all necessary written approvals have been secured prior to the mailing or other dissemination of any promotional materials by GNOC;

3. In consideration of the foregoing violations and corrective action to be taken by the respondent, the parties agree that the respondent shall pay $18,000.00 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5);

4. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint;

5. This stipulation shall be subject to the approval and acceptance of the Commission;

The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

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

1. The parties have voluntarily agreed to the facts, settlement terms and conditions as evidenced by their respective representative signatures.

2. The settlement is fair.

3. The settlement disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the **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 February 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

2/17/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 14 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

State of New Jersey

CASINO CONTROL COMMISSION

PRINCETON PIKE OFFICE PARK, BUILDING NO. 5
CN-208
TRENTON, NEW JERSEY 08625
609-530-4900

WALTER N. READ
CHAIR
CARL ZEITZ
VICE-CHAIR
W. DAVID WATERS
E. KENNETH BURDGE
VALERIE H. ARMSTRONG
COMMISSIONERS
609-530-4901

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARDW
LICENSE DIV. 609-441-3200

1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

May 12, 1987

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY ADMINISTRATION
AND GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401

CC# 871003PR06

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement have received your Submission dated April 23, 1987 concerning the June "Glitter of Gold Giveaway" Promotion. The drawing will be conducted in three phases: the "Early Bird", "Major" and "Late Bird" Drawings. The Early Bird and Late Bird Drawings involve the distribution of non-cash prizes only, while the Major Drawing will involve both cash and non-cash prizes. Our review indicates that additional revisions to the narrative are needed. Attached is a summary of our findings with recommendations for revisions to various sections of the Submission.

In addition, the Division is concerned that the participation rules regarding the promotion offers a distinct and unfair advantage to 24 karat club members over non-members. The Submission indicates that the 24 karat club member may obtain an unlimited number of Official Promotion Drawing Entry Forms by way of their slot play during the period of May 15, 1987 through June 15, 1987, while individuals who do not wish to gamble are limited to one, and only <u>one</u>, entry. Therefore, it is the Division's position that the bulk of the participants are paying consideration for a chance to win a prize of value. In circumstances such as these where opportunity for free entry is so greatly limited, the entire promotion must be viewed as one of and for a closed class of participants. As a result, the Division recommends this promotion be revised to provide for equal participation opportunities by all individuals.

Please make the necessary corrections by bracketing [ ] deletions and <u>underlining</u> additions and submit this Submission in its entirety to both staffs for review as soon as possible.

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EXHIBIT A

If you have any questions, please do not hesitate to contact Alan Waseleski of my staff.

Sincerely,

Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

AW:mlg
c: Patricia M. DiFlorio
Anthony B. DiFlorio
Alan Waseleski
Dudley Washington
William Perry
Fredric Gushin, Esq.
Katherine Smith, Esq.
Richard Carretta
Joan Rubin

CASINO CONTROL COMMISSION
DIVISION OF GAMING ENFORCEMENT
JUNE "GLITTER OF GOLD GIVEAWAY" PROMOTION
GNOC, CORP.

Item Number	Submission Page Ref.	Description
1.	p. 2, para. 1	The Submission should be revised to indicate that lost or stolen entries shall be voided and not subject to prizes or their cash equivalent.
2.	p. 2, para. 2	The Submission should be revised to indicate that the rules of the drawing shall be handed out along with the entry at the South Providence Avenue Office.
3.	p. 2, para. 3	The Submission should specify the name of the ballroom in which the drum will be moved at 5:30 p.m. on the day of the drawing.
4.	p. 3, para. 1	The Submission should specify how many keys will be employed and who will have authorized access to them. In addition, the Submission should include a key sign In/Out Control Log.
5.	p. 3, para. 2	Revise the Submission to include who will draw the five preliminary tickets from the drum. In addition, please specify who shall redeposit the winning entries from the preliminary drawing back into the drum and who will confirm same.
6.	p. 3, para. 2	The Submission should specify that the winning numbers of the preliminary drawing shall be verified by comparing the number on the stub to the "entry" and the comparison of the individual's physical appearance and/or signature on the "entry" to identification credentials presented. In addition, how will the five selected preliminary drawing tickets be delivered to the 24 karat club booth for posting?

Item Number	Submission Page Ref.	Description
7.	p. 5, para. 1	There appears to be an inconsistency on who will verify the winning numbers of the Late Bird Drawing. The Submission initially indicates that a Slot Marketing Representative shall verify the winning numbers. This is not consistent with the subsequent statement which indicates that a member of the Slot Marketing and Security Departments shall verify the winning numbers. Please clarify.
8.	p. 6, para. 2	The Submission should be revised to indicate that the written approvals of cash prizes of $1,000 or less shall be done in accordance with GNOC's System of Ancillary Services Industry Internal Control.
9.	p. 8, Item 1	Revise the time in which a patron can deposit his/her entry into the drum from 12:00 noon to 10:00 a.m. as previously stated in the Submission.
10.	p. 9, Item 19	Item 19 of the "Rules and Regulations" contradicts the promotion policy of allowing an entry form for every 30 bonus tickets redeemed by a 24 karat club member between May 15, 1987 through June 15, 1987. The rules and regulations should be revised accordingly.
11.	p. 10 Prize List	The times shown for the Early Bird Drawings should be revised to agree with the Submission.
12.	Exhibit C	There are two discrepancies between Exhibit C (Prize Payment Form) and the corresponding section of the Submission. The first discrepancy deals with the distribution of the triplicate and quadruplicate copies of the Prize Payment Form. Specifically, the Submission states that the triplicate copy will be forwarded to Accounting and the quadruplicate will be given to the customer. This is not consistent with Exhibit C which indicates that the triplicate copy will be

Item Number	Submission Page Ref.	Description
12.	(con't)	given to the customer and the quadruplicate will be sent to the Accounting Department. Please revise as to the proper distribution. The second discrepancy relates to the winner's address being included on the Prize Payment Form. Upon our review, we find no address space on such form and therefore, recommend that the form be revised to include such.
13.	Exhibit C	The Prize Payment Form should be revised to include the winning entry's serial number.
14.	General	The pages of the Submission should be sequentially numbered with the exception of the exhibits.

MARILU MARSHALL

GOLDEN NUGGET

June 3, 1987

Deno Marino, Deputy Director/Operations
Casino Control Commission
3131 Princeton Pike, Bldg. 5
CN-208
Lawrenceville, NJ 08625

Re: CC#871003PR06
June "Glitter of Gold Giveaway" Promotion

Dear Mr. Marino:

Enclosed please find revisions to GNOC, Corp.'s June "Glitter of Gold Giveaway" Promotion, which revisions have been made in accordance with the findings noted in your May 12, 1987 letter.

Please note that the rules of participation have been revised to eliminate the restriction on one entry per person, thereby addressing the Division's concern as to equal participation opportunites for all individuals.

Should you have any additional questions, please contact Larry Buck at 609-340-7435.

Sincerely,

Marilu Marshall

Marilu Marshall
Vice President of Regulatory
Administration & General Counsel

M²/sd-m
Enc.

CC: Patricia M. DiFlorio
Anthony B. DiFlorio
Alan Waseleski
Dudley Washington
William Perry
Fredric E. Gushin, Esq.
Katherine Smith, Esq.
Richard Carretta
Joan Rubin

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EXHIBIT B

INTERNAL CONTROL PROCEDURES FOR PROMOTIONAL DRAWING

CASH & NON-CASH PRIZES

Golden Nugget ("GNOC") shall hold a promotional drawing for cash and non-cash prizes open to members of the 24 Karat Club, as well as to members of the general public. Winners in the drawing shall receive prizes as specified below, and included in promotional literature distributed by GNOC. The odds of winning the available prizes will be determined by the number of entries received.

Participation in the drawing may be obtained by completing an Official Promotional Drawing Entry Form ("Entry Form"). (See Exhibit A attached hereto). The Entry Form shall be a one-part, serially prenumbered form which shall be perforated and divisible into two portions. The first portion shall contain, but not be limited to, serial number, date, time and location of the drawing, spaces for the customer to print and sign their name and shall be referred to as the "Entry". The second portion shall be referred to as the "Stub" and shall contain, but not be limited to, the serial number. Entry forms and rules shall be available at the 24 Karat Club Booth on the casino floor. Entry forms shall be received and controlled by the Income Control section of the Accounting Department and shall be distributed to the Slot Marketing Department and 24 Karat Redemption Booth by using the same procedures and forms as described in GNOC Statement of Management

Policy #34, Twenty-Four Karat Club. (See Exhibit B attached hereto). Official Promotion Drawing Entry Forms shall be distributed as follows:

1. By mail to 24 Karat Club members who have redeemed 100 or more 24 Karat Club Bonus Tickets since July 1, 1986.
2. To all members of the 24 Karat Club (including those described in #1 above) for each (30) bonus tickets redeemed during any casino day between May 15, 1987 and June 16, 1987. (Casino day is defined by the hours of the casino (10:00 A.M. to 4:00 A.M. or 10:00 A.M. to 6:00 A.M.).
3. Entries and the rules of the drawing may be obtained in person at 5 South Providence Avenue, Atlantic City, New Jersey, between Monday and Friday, from 9:00 A.M. to 5:00 P.M.

All participants must be 21 years of age or older. Employees of GNOC, Bally Manufacturing, Inc., and subsidiaries and members of their immediate families are ineligible to participate or win prizes. "Entries" are not replaceable in the event of loss or theft. Lost or stolen entries shall be void and not subject to prizes or their cash equivalent. Rules of the drawing shall be mailed to individuals described in #1 and #2 above and shall be available upon request at the 24 Karat Club Redemption Booth on the casino floor.

Completed "Entries" shall be dropped by the participant in a drum which will be open at 10:00 A.M., at the drawing loca-

tion and will remain open until five minutes prior to the drawing on the date of the drawing. The drum shall be located in the foyer of the Cambridge Ballroom until 5:30 P.M. on the date of the drawing, when it shall be moved into the Ballroom. A 24 Karat Club attendant shall be posted at the drum until the final drawing is completed. The drum shall be locked by one lock with the keys being controlled [at the security podium on the casino floor] by the Income Control Department until the day of the drawing. Income Control shall maintain two keys to the drum in the Department's locked key control cabinet. Only members of Income Control have access to the contents of the key cabinet. On the day of the drawing Income Control will forward one key to a member of Security who shall maintain the key during the event. If the door to the drum is required to be opened prior to the drawing, a security officer shall bring the key to the drawing location and unlock the door. The door shall be locked again in the presence of security. Closed circuit television cameras shall be posted on the drum while the door is open. Security shall bring the key to the drawing location at the time of the drawing and open the door to the drum. The participant shall retain the Stub to be used in claiming prizes.

A preliminary drawing ("Early Bird") shall be held at 1:45 P.M. at the drawing location, following the procedures described below. All five preliminary drawing tickets shall be drawn at once by an independent patron in the presence of a 24 Karat Shift Manager or above and a member of the Security Department. The

winning ticket numbers shall be transported to and posted at the 24 Karat Club Booth on the casino floor at 2:00 P.M. by a 24 Karat Shift Manager or above and the member of Security. Winners of the preliminary drawing must present their ticket stubs at the 24 Karat Club Booth before 3:00 P.M. in order to claim their prizes. Prizes shall be awarded at the Booth whenever possible after the winner has presented two forms of identification credentials to the Booth personnel. Such credentials shall be used to verify the individual's physical appearance and/or signature on the entry. The serial number of the ticket stub presented by the winner shall be compared to the serial number of the ticket posted. Booth personnel verifying the numbers shall sign the back of the winning entry. Prizes not claimed by 3:00 P.M. shall be forfeited and not awarded. All Entries drawn for the preliminary drawing shall be redeposited to the drum for later drawings by a 24 Karat Shift Manager or above and the member of Security. Participants must be present at the drawing location at the time of the drawing to win. Seven winning "Entries" shall initially be drawn from the drum by a member of the audience. The back of the "Entry" shall be signed by the individual drawing the "Entry" to prevent substitution. The winning participant's name and "Entry" number shall be announced. The participant holding the winning "Entry" number shall have ten minutes to present their Stub to GNOC representatives in charge of the drawing. If the participant does not present the "Stub" within ten minutes, another "Entry" shall be drawn from the drum. A GNOC representative will be responsible for timing the ten minutes

via their watch. Each holder of a Winning Entry shall be given an opportunity to spin a wheel in order to determine what prize shall be awarded. Immediately prior to spinning the wheel the holder of each winning entry shall be asked to predict which stop on the wheel his/her spin will land. Such prediction shall be made in full view of all participants while utilizing a microphone. Should the spin land on the stop which was predicted by the participant, the participant shall be awarded $5,000 in addition to the prize indicated on the wheel. After the sixth (out of seven) holder of the Winning Entries spins the wheel, an eigth Entry shall be drawn from the drum as a bonus to the participants. The internal controls pertaining to the eigth entry shall be equivalent to those of the previous seven entries as outlined previously. Each stop on the wheel shall indicate one prize or a free spin. The wheel(s) shall be standard "Big Six" wheel(s) on which prizes shall be inserted in place of numbers. All prizes available on the wheel(s) shall be listed on the prize schedule contained in promotional literature.

The "Entry" of prize winners from the major drawing, as well as entries of participants not present to claim their prize relating to the major drawing shall not be placed in the drum for the "Late Bird" drawings. Seventeen entries will be drawn as "Late Bird" winners and shall be posted at the 24 Karat Club Booth on the casino floor at 15 minute intervals beginning at 9:00 P.M. and ending at 1:00 A.M. Winners of "Late Bird" drawings must claim their prizes at the 24 Karat Club Booth by 1:30 A.M.,

following procedures described for "Early Bird" Winners. Participants must have their Stub and two forms of identification credentials which shall include picture and/or signature for verification purposes. [Winning numbers shall be verified by a member of Slot Marketing who shall compare the number of the stub to the "Entry" to identification credentials presented.] The Stub and the "Entry" shall be shown on screens via closed circuit television which shall be visible to all individuals present at the drawing. Winning numbers shall be verified by a member of the Slot Marketing and Security Departments by comparing the number on the stub to the "Entry" and comparison of the individuals physical appearance and/or signature on "Entry" to identification credentials presented. Such comparisons shall be evidenced by the signatures of the two representatives on the back of the "Entry". Slot Marketing shall be represented by the Slot Marketing Director and/or 24 Karat Club Managers who shall be responsible for conducting the drawing and awarding of prizes as described in this document. Entry Forms shall be destroyed by shredding subsequent to the drawing. The destruction shall be performed by a representative of the Income Control Department. Winners stubs and "Entries" shall be retained in the Slot Marketing Department files. Prizes shall be awarded at the drawing location when possible.

All local and federal taxes are the sole responsibility of the prize winners. Prize winners shall complete an IRS Form 1099. Individuals winning more than $10,000 in cash shall complete an

IRS Form 8362.

Cash prizes of $1,000 or less may be paid in cash from funds derived from the Satellite Bank and maintained at the drawing location in the Cambridge Ballroom or from funds derived from the cage and maintained at the Casino Cage at the winner's preference by a Casino or Satellite Cage Supervisor or Cashier. A prize payment form (see Exhibit C attached hereto) will be completed by a Slot Marketing representative to include, but not be limited to, date, amount, winning entry's serial number and winner's name. [and address.] The prize payment form shall require the written approval of the Director of Slot Marketing and/or a Golden Nugget executive in accordance with GNOC's System of Ancillary Services Industry Internal Control. The prize payment form shall be a four-part form; the original shall be presented to a satellite cage supervisor or cashier for disbursement of funds; the duplicate shall be retained and filed by Slot Marketing; the triplicate will be given to the customer [forwarded to accounting]; and the quadruplicate will be forwarded to Accounting [given to the customer]. The prize payment form shall be signed by the Satellite Cage representative, the Slot Marketing representative, the director of Slot Marketing and/or a GNOC executive, and the customer as receipt of funds received. The original copy of the prize payment form shall be retained by the Satellite Cage representative to be used in the end of shift settlement of Satellite Cage funds.

Cash prizes greater than $5,000 will be disbursed as follows:

- A GNOC check requisition (See Exhibit D attached hereto) shall be completed to include, but not be limited to, the date, amount, and winner's name and address. The check requisition shall require written approval by the Director of Slot Marketing and/or an executive as required by GNOC's System of Ancillary Services Industry Internal Control. (See Exhibit E attached hereto). The Check Requisition is a two-part form; the original shall be presented to the cage for disbursement of funds, and the duplicate shall be retained and filed by Slot Marketing.
- The check requisition shall be presented to a cage cashier who shall disburse funds in accordance with procedures described in GNOC's System of Internal Control - Appendix Section A, "Checks Issued to Customer's On behalf of the Casino Cage". (See Exhibit F attached hereto).

24 KARAT CLUB

GLITTER OF GOLD GIVEAWAY

RULES & REGULATIONS

1. To enter, simply fill out the entry form and deposit the portion designated "entry" in the drum located in the Cambridge Ballroom, second floor, on June 17, 1987, between 10:00 A.M. [12:00 Noon] and 6:55 PM. Drawings will begin at 7:00 PM in the Cambridge Room on June 17, 1987.

2. Participants in the 24 Karat Glitter of Gold Giveaway must be 21 years of age or older.

3. Employees of Golden Nugget (GNOC, Corp.), Bally Manufacturing, Inc. and subsidiaries thereof and members of their immediate families are ineligible to enter the 24 Karat Glitter of Gold Giveaway.

4. Participants in the 24 Karat Glitter of Gold Giveaway must be present to win.

5. 24 Karat Club members may obtain entry forms by redeeming 30 bonus tickets (in one transaction) at the 24 Karat Club Booth. (Based upon availability).

6. All winners of the 24 Karat Glitter of Gold Giveaway will grant permission for promotional use by Golden Nugget (GNOC, Corp.) of their names and photographs.

7. No prize substitutions or cash equivalent will be permitted in the 24 Karat Glitter of Gold Giveaway.

8. Participants in the 24 Karat Glitter of Gold Giveaway must present ticket stub and legal identification credentials to claim prizes.

9. Prizes given in the 24 Karat Glitter of Gold Giveaway are not transferrable and are not redeemable for cash.

10. No purchase is necessary to enter the 24 Karat Glitter of Gold Giveaway.

11. No entries will be accepted for the 24 Karat Glitter of Gold Giveaway after 6:55 PM, June 17, 1987.

12. Entry tickets for the 24 Karat Glitter of Gold Giveaway may be obtained by sending a single hand-written request and a self-addressed, stamped envelope to Golden Nugget, 24 Karat

Club Drawing, PO Box 1737, Atlantic City, NJ 08404, and must be postmarked no later than midnight, June 3, 1987. Limit one entry per person for the 24 Karat Glitter of Gold Giveaway. Golden Nugget is not responsible for late, lost or misplaced mail.

13. Winners in the 24 Karat Glitter of Gold Giveaway will be announced beginning 7:00 PM, June 17, 1987 in the Cambridge Ballroom. Prizes must be claimed by winner within ten minutes of prize announcement.

14. All winning tickets must be original and subject to verification by Golden Nugget. Any ticket that is illegible, mutilated, altered, defaced or reproduced will be deemed void. Tickets will be void if not obtained through authorized legitimate channels.

15. All local, state and federal taxes for winners in the 24 Karat Glitter of Gold Giveaway are the sole responsibility of the winner.

16. Entries may also be obtained in person at 5 S. Providence Avenue between Monday and Friday from 9:00 AM-5:00 PM and Saturday and Sunday from 9:00 AM until 12 noon. Multiple entries will be null and void.

17. Entry tickets for the 24 Karat Glitter of Gold Giveaway to be distributed will be limited to 15,000.

18. Promotion void in whole or in part where prohibited by law. Any attempted forgery of tickets will be subject to appropriate legal action.

[19. One entry permitted per person and one entry permitted per household.]

"BET WITH YOUR HEAD, NOT OVER IT"

PRIZE LIST

GLITTER OF GOLD - JUNE 17, 1987

WHEEL ITEMS: 27 SPOTS TOTAL

I. MERCHANDISE: 19 SPOTS

1. Family reunion
2. Fantasy vacation (MGM GRAND)
3. Cadillac Eldorado or $25,000
4. Shopping spree to New York City with lunch, limo and $1,000 spending money
5. $1,000 gift certificate to retail shops
6. $3,000 gift certificate to retail shops
7. Samsonite 5 piece luggage with a secret trip concealed (MGM GRAND)
8. Sports package; it includes tickets for event of their choice, hotel stay and transportation.
9. Family oil portrait
10. Patio furniture & grill - plus beach items
11. Kitchen and utensils
12. 41" television
13. Complete china set
14. Movie camera
15. Mink coat
16. Bedroom set
17. Freezer of meat and a chef will cook a gourmet dinner at their home
18. Rack system, stereo
19. Living room (contemporary)

II. CASH: 7 SPOT ranging from $2,000 - $5,000

III. INSURANCE: 1 SPOT

EARLY BIRD DRAWINGS: Five winners selected at 1:45PM and posted at 2:00 PM

Prize: Dinner for two at choice of Charlie's Stefano's or Lilly Langtry's

LATE BIRD DRAWINGS: Seventeen winners selected every 15 minutes from 9:00 PM until 1:00 AM

Drawing order:

9:00 PM - Talking scale*
9:15 PM - Gucci handbag*
9:30 PM - Panasonic stereo head set*
9:45 PM - Crystal ice bucket*
10:00 PM - Quartz wall clock*
10:15 PM - Typewriter*
10:30 PM - Bottle of Dom & glasses*
10:45 PM - Polaroid camera*
11:00 PM - Crystal vase*
11:15 PM - Dinner for four**
11:30 PM - Dinner for two & room**
11:45 PM - GN makeover at Beauty Salon with meal for 2 at Cornucopia
12:00 AM - $300 gift certificate to Le Salon or Impulse
12:15 AM - Dinner for two, room & limo**
12:30 AM - Sony 19" television*
12:45 AM - Minolta camera set*
1:00 AM - Automobile - Buick Skylark

Larry Buck.

GOLDEN NUGGET

June 5, 1987

Deno Marino, Deputy Director/Operations
Casino Control Commission
3131 Princeton Pike, Bldg. #5
CN-208
Lawrenceville, NJ 08625

RE: CC#871003PR06
JUNE "GLITTER OF GOLD GIVEAWAY" PROMOTION

Dear Mr. Marino:

Enclosed please find revisions to GNOC, Corp.'s June "Glitter of Gold Giveaway" Rules and Regulations which have been made as requested by Mr. Dudley Washington of your staff. The rules have been revised to eliminate the restriction on one entry per person to insure equal participation opportunities for all individuals. In order to prevent abuse by the general public, GNOC shall limit the number of free Entries given to individuals who do not wish to gamble to three per day. Please see the attached Entry Ticket Count and calculations from the March 18, 1987 Glitter of Gold.

Should you have any questions, please contact Larry Buck at 609-340-7242.

Sincerely,

Marilu Marshall

MARILU MARSHALL
Vice President Of Regulatory
Administration & General Counsel

encl.
c: Patricia M. DiFlorio
Anthony B. DiFlorio
Alan Waseleski
Dudley Washington
William Perry
Fredric E. Gushin, Esq.
Katherine Smith, Esq.
Richard Carretta
Joan Rubin
Mark Scheiner

EXHIBIT C

POST OFFICE BOX 1737, ATLANTIC CITY, NEW JERSEY 08404, (609) 347-71

24 KARAT CLUB

GLITTER OF GOLD GIVEAWAY

RULES & REGULATIONS

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6. All winners of the 24 Karat Glitter of Gold Giveaway will grant permission for promotional use by Golden Nugget (GNOC, Corp.) of their names and photographs.

7. No prize substitutions or cash equivalent will be permitted in the 24 Karat Glitter of Gold Giveaway.

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Club Drawing, PO Box 1737, Atlantic City, NJ 08404, and must be postmarked no later than midnight, June 3, 1987. [Limit one entry per person for the 24 Karat Glitter of Gold Giveaway.] Golden Nugget is not responsible for late, lost or misplaced mail.

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14. All winning tickets must be original and subject to verification by Golden Nugget. Any ticket that is illegible, mutilated, altered, defaced or reproduced will be deemed void. Tickets will be void if not obtained through authorized legitimate channels.

15. All local, state and federal taxes for winners in the 24 Karat Glitter of Gold Giveaway are the sole responsibility of the winner.

16. Entries may also be obtained in person at 5 S. Providence Avenue between Monday and Friday from 9:00 AM-5:00 PM and Saturday and Sunday from 9:00 AM until 12 noon. Multiple entries will be null and void.

17. Entry tickets for the 24 Karat Glitter of Gold Giveaway to be distributed will be limited to 15,000.

18. Promotion void in whole or in part where prohibited by law. Any attempted forgery of tickets will be subject to appropriate legal action.

[19. One entry permitted per person and one entry permitted per household.]

"BET WITH YOUR HEAD, NOT OVER IT"

GLITTER OF GOLD

MARCH 18, 1987

ENTRY TICKET COUNT

274 members had 1 entry ticket.
171 members had 2 entry tickets.
110 members had 3 entry tickets.
99 members had 4 entry tickets.
73 members had 5 entry tickets.
55 members had 6 entry tickets.
57 members had 7 entry tickets.
25 members had 8 entry tickets.
27 members had 9 entry tickets.
24 members had 10 entry tickets.
22 members had 11 entry tickets.
14 members had 12 entry tickets.
13 members had 13 entry tickets.
19 members had 14 entry tickets.
12 members had 15 entry tickets.
12 members had 16 entry tickets.
10 members had 17 entry tickets.
8 members had 18 entry tickets.
1 member had 19 entry tickets.
5 members had 20 entry tickets.
3 members had 21 entry tickets.
9 members had 22 entry tickets.
5 members had 23 entry tickets.
1 member had 24 entry tickets.
4 members had 25 entry tickets.
2 members had 26 entry tickets.
6 members had 27 entry tickets.
1 member had 28 entry tickets.
2 members had 29 entry tickets.
3 members had 30 entry tickets.
1 member had 31 entry tickets.
1 member had 32 entry tickets.
1 member had 33 entry tickets.
1 member had 34 entry tickets.
1 member had 35 entry tickets.
2 members had 36 entry tickets.
2 members had 38 entry tickets.
1 member had 39 entry tickets.
1 member had 40 entry tickets.
2 members had 41 entry tickets.
1 member had 42 entry tickets.
2 members had 45 entry tickets.
2 members had 47 entry tickets.
1 member had 49 entry tickets.
1 memebr had 50 entry tickets.
1 member had 53 entry tickets.
2 members had 56 entry tickets.
2 members had 58 entry tickets.
1 member had 59 entry tickets.
1 member had 61 entry tickets.
1 member had 69 entry tickets.
1 member had 70 entry tickets.
1 member had 74 entry tickets.
1 member had 87 entry tickets.
2 members had 100 entry tickets.

A total of 7,359 entry tickets were put into the drum.

GLITTER OF GOLD
MARCH 18, 1987

Maximum Number of Entry Tickets entered by any patron	:		100 entries
Length of promotion (February 11th - March 18th)	:	÷	36 days
Average Entries per day by most active patron	:		2.77 entires per day

Conclusion: GNOC shall allow each person to receive 3 free entries per day (2.77 rounded up).

Below is a summary of the average total entries received by all patrons during the March 18 Glitter of Gold promotion:

Mean : 6.75 Entry tickets or 0.1875 Entries per day
Median : 3.00 Entry tickets or 0.0833 Entries per day
Mode : 1.00 Entry tickets or 0.0277 Entries per day





State of New Jersey

WALTER N. READ
CHAIR
CARL ZEITZ
VICE-CHAIR
W. DAVID WATERS
E. KENNETH BURDGE
VALERIE H. ARMSTRONG
COMMISSIONERS
609-530-4001

CASINO CONTROL COMMISSION
PRINCETON PIKE OFFICE PARK, BUILDING NO. 3
CN-208
TRENTON, NEW JERSEY 08625
609-530-4000

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARD
LICENSE DIV. 609-441-3200
1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3265

June 12, 1987

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY
ADMINISTRATION & GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401

CC# 871003PR06

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement reviewed GNOC, CORP.'s June "Glitter of Gold Giveaway" promotion submitted by letter dated April 23, 1987. Upon review, the staffs determined that additional information and clarification was required. The necessary revisions to the Submission were requested by letter dated May 12, 1987. In response to this request, GNOC, CORP. amended its Submission by letters dated June 3, 1987 and June 5, 1987.

It has come to the staffs attention that GNOC, CORP.'s June "Glitter of Gold Giveaway" promotion commenced in May, 1987, prior to any approval given by the Commission.

Based on the facts noted above, the staffs will not do any further review of this Submission. By copy of this letter, I am informing the Division of this situation.

If you have any questions, please do not hesitate to contact Dudley Washington of my staff.

Sincerely,

Deno R. Marino

Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

DW:sb
c: Patricia M. DiFlorio
Anthony B. DiFlorio
Alan Waseleski
Dudley Washington
William Perry
Fredric Gushin, Esq.
Joan Rubin

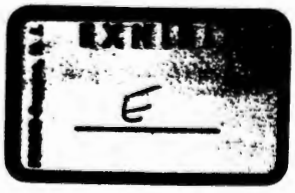
...sey Is An Equal Opportunity Employer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-421
OAL DOCKET NO. CCC 5087-87
ORDER NO. 88-23-14

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. GNOC CORPORATION, t/a THE GOLDEN NUGGET HOTEL AND CASINO, Respondent.	ORDER

A stipulation and settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation and settlement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 8, 1988,

IT IS on this 21st day of June 1988, ORDERED that the initial decision is adopted and incorporated herein by reference; and



IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of $9500 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

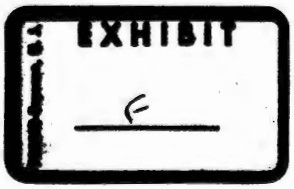
By: Frances I. Sundheim
Deputy Attorney General
(609) 984-3969

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.:87-421

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, vs. GNOC CORPORATION t/a THE GOLDEN NUGGET HOTEL AND CASINO, Respondent.	STIPULATION OF FACTS AND SETTLEMENT

MAY 1 2 29 PM '88

The above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter called "Division"), by Frances I. Sundheim, Deputy Attorney General, and Kenneth F. Oettle, Esq. of Sills, Cummis, Zuckerman, Radin, Tischmann, Epstein & Gross P.A. attorneys for Respondent, GNOC, CORP., t/a Bally's Grand, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:



COUNT ONE

1. Plaintiff, by and through its Division of Gaming Enforcement, is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1 et seq. (hereinafter called "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter called "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, GNOC, CORP. (hereinafter called "GNOC") t/a Bally's Grand is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Respondent GNOC is the holder of a plenary casino license issued to it by the Commission, authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984 and GNOC has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. GNOC is the holder of, and operates pursuant to, a Certificate of Operation effective May 1, 1984. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said

Certificate of Operation entitles GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. Respondent GNOC is the successor in interest to GNAC, CORP. (hereinafter referred to "GNAC"), which formerly traded as The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded to GNAC's interest as casino licensee as of May 1, 1984.

6. GNOC is a wholly-owned subsidiary of GNAC, which in turn is a wholly-owned subsidiary of Bally Manufacturing Corporation ("Bally"). By means of a Purchase Agreement dated as of January 18, 1987, as amended February 28, 1987, all the outstanding stock of GNAC, among other property, was sold by Golden Nugget, Inc. to Bally, which thus became a holding company of GNOC.

7. By letter dated January 6, 1986, the Casino Control Commission (hereinafter "Commission") informed GNOC that the December 1985 Glitter of Gold Giveaway, which began December 1, 1985, had been submitted for approval four days after the scheduled date of implementation. This letter warned that future promotional procedures submitted after implementation would not be approved and would be forwarded to the Division for appropriate action. A copy of the January 6, 1986 Commission letter is attached hereto and incorporated herein as Exhibit "A".

8. On or about February 26, 1987, GNOC advised the Commission and the Division of its March "Glitter of Gold Giveaway" promotion which began February 11, 1987, with the mailing of

promotional literature to patrons. The drawing for the March "Glitter of Gold Giveaway" was held March 18, 1987.

9. By letter dated March 6, 1987, the Commission informed GNOC that it would not review the March "Glitter of Gold Giveaway" promotional submission because it was submitted after implementation of the promotion, in contravention of the January 6, 1986 Commission warning referred to in paragraph 6. A copy of the March 6, 1987 Commission letter is attached hereto and incorporated herein as Exhibit "B".

10. N.J.S.A. 5:12-99(a)(1) states, in pertinent part, as follows:

> Each casino licensee shall submit to the Commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in previously submitted control plans are to become effective, unless otherwise directed the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:
> (1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

11. N.J.S.A. 5:12-99(b) provides for Commission review of all submissions required by the foregoing subsection (a) for determination as to the sufficiency and adequacy of controls, and further provides... "No casino licensee shall commence gaming operations, or alter in fact it internal controls, unless and until such system of its controls is approved by the Commission."

12. N.J.A.C. 19:45-1.46 sets forth the minimum time periods for promotional submissions and requires, in pertinent part, as follows:

> b. Detailed procedures controlling all programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to Commission and Division at least fifteen days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee. (Emphasis added)

13. By submitting the March "Glitter of Gold Giveaway" promotion four days after the scheduled date of implementation, as more fully described in paragraphs number 6 to 8, GNOC committed violations of N.J.S.A. 5:12-99(a)(1) and (b), and N.J.A.C. 19:45-1.46(b), which imposes an affirmative obligation upon the Respondent to submit promotional procedures fifteen days prior to the scheduled date of implementation.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;

2. In recognition of the above, GNOC will take corrective action to ensure that all future promotions are carefully monitored to ensure that all necessary written approvals have been secured prior to the mailing or other dissemination of any promotional materials by GNOC;

3. In consideration of the foregoing violations and corrective action to be taken by the Respondent, the parties agree that the Respondent shall pay $9,500.00 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5);

4. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint;

5. This stipulation shall be subject to the approval and acceptance of the Commission;

The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

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

By: _____
Frances I. Sundheim
Deputy Attorney General

DATED: 5/2/88

By: _____
Kenneth F. Oettle, Esq.
Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, P.A.
Attorneys for Respondent
GNOC, CORP. t/a Bally's Grand

DATED: 5/4/88

By: _____
Latha Gilliam, Esq.
Corporate Counsel
GNOC, CORP. t/a Bally's Grand

DATED: 5/3/88

040788/3

[redacted]

State of New Jersey

CASINO CONTROL COMMISSION

PRINCETON PIKE OFFICE PARK, BUILDING NO. 5
CN-208
TRENTON, NEW JERSEY 08625
609-292-7730

WALTER N. READ
CHAIRMAN
E. KENNETH BURDGE
VICE-CHAIRMAN
VALERIE H. ARMSTRONG
CARL ZEITZ
JOEL R. JACOBSON
COMMISSIONERS
609-292-3144

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARDWALK
LICENSE DIV. 609-441-3200
1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

January 6, 1985

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY
ADMINISTRATION AND GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement have received your December 5, 1985 letter concerning the December "Glitter of Gold Giveaway" promotion which began December 1, 1985. Under this program, a drawing was held on December 18, 1985 to award various prizes ranging from the Grand prize of a trip to London or Paris including airfare, accommodations and $10,000 in American Express Travelers checks, to the fourth prize of a video cassette recorder and camcorder.

It should be noted that these procedures were submitted four days after the scheduled date of implementation. Pursuant to N.J.A.C. 19:45-1.46(b) these procedures should have been submitted 15 days prior to the scheduled date of implementation. In addition, your letter indicated that this promotion "will be conducted in exactly the same fashion as the September drawing in accordance with the rules and regulations that were previously approved. The only difference will be the prizes awarded and, therefore, the internal controls have been amended accordingly." Upon review, it was determined in fact that the procedures were not exactly the same as you indicated and revisions to these procedures were necessary. Please be advised that in the future, procedures which are submitted after implementation will not be approved and will be forwarded to the Division for any action they deem necessary.

Based on your verbal representations which are included as an attachment to this letter, verbal approval was granted on December 18, 1985 to hold the drawing. This letter will confirm the verbal approval given on December 18, 1985.

New Jersey Is An Equal Opportunity Employer

Before we can finalize this Submission, it is requested that you make the appropriate revisions and resubmit them to the Commission and the Division.

If you have any questions, please do not hesitate to contact Donna Weber of my staff.

Sincerely,

Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

DW:lap
Attachment
c: Alfred Luciani
Patricia Maggio DiFlorio
Donna Weber
Anthony DiFlorio
Gloria Ford
Thomas Auriemma
Fredric Gushin, Esq.
Katherine Smith, Esq.
Steven Ocksrider

CASINO CONTROL COMMISSION
DIVISION OF GAMING ENFORCEMENT
MARILU MARSHALL'S VERBAL REPRESENTATIONS FOR
REVISIONS TO THE "GLITTER OF GOLD GIVEAWAY" PROMOTION
GNOC, CORP.

OK V 1. The drum will be locked, with the key controlled by the Slot Marketing Director.

OK V 2. The winning number shall be verified by a member of Slot Marketing and another person with no incompatible functions, by comparing the number on the "Stub" to the "Entry" to identification credentials presented.

OK V 3. The Submission will be revised to indicate that the entry forms shall be received and controlled by the Income Control Section of the Accounting Department and shall be distributed to the Slot Marketing Department and 24 Karat Redemption Booth using the same procedures and forms as described in GNOC, CORP.'s Statement of Management Policy #34. However, it should be noted that since GNOC, CORP. distributed the entry forms prior to the Commission's approval, it was impossible for GNOC to follow this procedure. If future drawings of this nature are held, the above procedures should be followed, or alternate procedures should be developed and approved.

V - revised accordingly.





State of New Jersey

CASINO CONTROL COMMISSION

PRINCETON PIKE OFFICE PARK, BUILDING NO. 3
CN-208
TRENTON, NEW JERSEY 08625
609-530-4900

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARDWA
LICENSE DIV. 609-441-3200

1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

WALTER N. READ
CHAIR
CARL ZEITZ
VICE-CHAIR
W. DAVID WATERS
E. KENNETH BUROOE
VALERIE H. ARMSTRONG
COMMISSIONERS

609-530-4901

March 6, 1987

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY
ADMINISTRATION AND GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401 CC# 870491PR06

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement have received your February 26, 1987 letter concerning the March "Glitter of Gold Giveaway" promotion which began February 11, 1987.

Upon reviewing the history of this promotion, it was noted that GNOC, CORP. was advised in the Commission's January 6, 1986 letter that its December 1985 promotion was submitted four days after the scheduled date of implementation and was not in compliance with N.J.A.C. 19:45-1.46(b) which states that procedures must be submitted fifteen days prior to the scheduled date of implementation. In addition, that letter warned that any future Submissions which were forwarded in the same manner would not be approved and would be forwarded to the Division for any action they deemed necessary. I have attached a copy for your reference.

Since GNOC, CORP. has ignored this warning and has submitted the March 1987 promotion after its scheduled date of implementation, the staffs will not review this Submission. By copy of this letter, I am informing the Division of this situation.

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If you have any questions, please do not hesitate to contact Alan Waseleski of my staff.

Sincerely,

Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

AW:mlg
Attachment
c: Alfred Luciani
Deno R. Marino
Anthony DiFlorio
Alan Waseleski
Dudley Washington
Ralph Frulio
Fredric Gushin, Esq.
Katherine Smith, Esq.
Joan Rubin

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-117
APPLICATION NO. 69829-21
REGISTRATION NO. 12653-40
OAL DOCKET NO. CCC 2667-88
ORDER NO. 88-50-6

APPLICATION OF CLIFFORD GRANT

FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of December 21, 1988,

IT IS on this 26th day of January 1989, ORDERED that the initial decision is modified as follows:

(1) At page 6 of the initial decision the ALJ observed: "It is difficult to make a judgment, in the absence of testimony from both sides and in light of the scant and unreliable nature of the documentary evidence presented, whether Grant would have been convicted of these offenses had they been subject to a trial in municipal court rather than the dismissal which occurred when the complainants failed to appear. On the whole, I believe it better not to draw a conclusion as to whether or not Grant would have been convicted but instead to consider them in a more general sense as to the good character, honesty and integrity issue."

> While the ALJ was correct in addressing the ultimate question in this case solely in terms of whether Mr. Grant had established his good character, honesty and integrity, the judge erred in suggesting that it would be appropriate to determine whether or not Grant would have been convicted in municipal court. A conviction requires proof beyond a reasonable doubt. The operative standard in this administrative proceeding is the civil or preponderance of the evidence standard. Thus, although the Division neither alleged nor sought to establish that one or more of Mr. Grant's unprosecuted assault charges was disqualifying pursuant to N.J.S.A. 5:12-86(c) and (g), had it done so, the disqualification would have had to appear 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, 10 N.J.A.R. 244, 257 (1979).

IT IS FURTHER ORDERED that the application of Clifford Grant is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license,

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

IT IS FURTHER ORDERED that this denial shall not affect Clifford Grant's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2667-88
AGENCY DKT. NO. 88-EA-117

CLIFFORD GRANT,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Clifford Grant, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 11, 1988 Decided: November 3, 1988

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

Clifford Grant applied to the Casino Control Commission ("Commission") for licensure as a casino employee, designating the position which he sought as security employee. The Division of Gaming Enforcement ("Division") objected to licensure. Mr. Grant requested a hearing on the proposed denial and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 3, 1988. A Prehearing Order, incorporating issues for consideration at the hearing, was issued on June 17, 1988, by Honorable Jeff S. Masin, ALJ. The issues set forth were as follows:

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A. Does the petitioner have the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90b, incorporating the standards of N.J.S.A. 5:12-89b(2)?

The Division originally set forth in its letter to the Commission of December 22, 1987, the incidents which it believed raised significant questions about Mr. Grant's good character, honesty and integrity. Mr. Grant addressed these at the hearing and the Division offered documentary evidence concerning the matters, although it presented no live witnesses.

The first incident addressed by Mr. Grant was a 1971 arrest and conviction for a misdemeanor offense of possession of marijuana. This arrest occurred in New York City. At the time of his arrest, Grant acknowledged that he identified himself to the police as Michael Rivera, a false name. He claimed that he told the police his real name "after awhile." The amount of marijuana was less than an ounce which at the time constituted a misdemeanor offense in New York. The petitioner served 18 days in jail for this offense.

On March 11, 1975, Grant acknowledged that he was involved in the robbery of a bar which occurred during the evening hours. Grant pled guilty to the robbery charge and was sentenced to three years in prison, serving 18 months at Auburn Penitentiary. According to the petitioner, he was apprehended shortly after the robbery. The weapon involved was a pistol and it was found on the street. Grant had two accomplices in the robbery, which occurred at a time when the bar was occupied by three patrons and the bartender.

The next incident noted in the letter was a February 19, 1981 arrest in Atlantic City for assault, N.J.S.A. 2C:12-1 and terroristic threats, N.J.S.A. 2C:12-3. According to Grant, this incident was a domestic dispute with his wife Mary Kay. She called the police and filed a charge. He left the residence and she never showed up in court. According to the Division's letter, that matter was dismissed by the Atlantic City Municipal Court on February 24, 1981, apparently for lack of prosecution. Grant acknowledged that he did hit his wife, although he initially pled not guilty before the matter was dismissed.

On March 15, 1983, Grant was arrested in Atlantic City and charged with aggravated assault, N.J.S.A. 2C:12-1B and terroristic threats, N.J.S.A. 2C:12-3.

According to the petitioner, he did not hit the victim in this incident. He claimed that he came to her house and another man was there who was arguing with her. The lady was hit by the other man who had a knife. Grant ran outside and left and was later charged. The "vicitim" did not show up in court and the matter was dismissed by the Atlantic City Municipal Court on June 7, 1983.

On December 11, 1984, Mr. Grant was arrested for assault, N.J.S.A. 2C:12-1a. The charges were dismissed by the municipal court on December 21, 1984, when the alleged victim did not appear in court. In this incident, Grant explained that he was living in a building with Mr. Beverly, the alleged victim, and Beverly's girlfriend. Grant explained that this was a "domestic" dispute which arose because Beverly's girlfriend frequently came down to Grant's apartment to borrow things. Apparently, Beverly became jealous and confronted Grant. Some name calling ensued and then Beverly made some comments about whether anything was going on between Grant and the female. Beverly then raised a weapon and hit Grant, who "retaliated." As Grant explained the results "He went to the police. I didn't." As noted, no one appeared in court and the matter was dismissed.

On August 14, 1985, the petitioner was arrested in Atlantic City and charged with assault on Victoria Jenkins. Grant and Jenkins were the parents of a son. Grant testified that he threatened to leave and take his son with him and take care of him "at a distance" from Jenkins. An argument ensued and Jenkins called the police. She claimed that he hit her, but he denies that he did so. Ms. Jenkins failed to appear in court and the matter was dismissed on August 23, 1985.

On November 16, 1985, Jenkins was arrested and charged with simple assault, N.J.S.A. 2C:12-1(a). He described this incident as involving he and his landlord, Myrtle Ross. He had been paying her rent, but she wanted him to leave. He felt that she could not just throw him out after having taken his money and he said he wanted his money back. He would not leave without the money so Ms. Ross filed a "harassment" charge in an attempt to get him removed. She never appeared in court at the hearing and the matter was dimissed on January 9, 1986.

On November 16, 1985, Grant was arrested on a charge of harassment, N.J.S.A. 2C:33-4. According to Grant, this incident arose because of some problems between

Grant and William Johnson, a fellow security officer for the Atlantic City Housing Authority. Grant testified that he was being "intimidated" by Johnson and that he had repeatedly warned him not to do so. This continued and Johnson was writing "false reports as to my work performance. . . . It was seen very clear to me that he was either trying to get me fired or some sort of disciplinary action to be taken against me." Grant "ran into" Johnson one night on the street and confronted him. Johnson raised his hand, Grant punched him in the mouth and Johnson called the police. Grant entered a plea of guilty to the charges and was fined $500.

In addition to the above matters, on June 2, 1987, the Atlantic County Prosecutors Officer charged Grant with two counts of forgery, N.J.S.A. 2C:21-1, and theft by deception in the fourth degree, N.J.S.A. 2C:20-4. According to the petitioner, the matter was ultimately dismissed on the condition that he pay $200 to a bank. According to Grant, he found a blank money order in the street which had been really made out for $30, but which appeared to be made out for $300. The bank apparently caught the error and demanded the money back from him after it had paid him $300. He denied altering the document and was surprised that the bank was asking him for the money back because they had paid him the $300.

Mr. Grant is 44 years old and supports two children, one of whom lives with him. He has been employed at several Atlantic City casino hotels since approximately 1980. He presently works as a bus greeter at the bus operations department at the Sands Hotel, holding this position since January 1988. He presented a good character reference from Michael Trageser, manager of Day Tour Sales at the Sands, who indicated that Mr. Grant is "considered to be one of our best employees. He is reliable, trustworthy, and of the highest moral character."

Before his employment at the Sands, the petitioner was employed at the Showboat as a houseman for six months from May through November 1987. He left that position because of a dispute with another employee. He worked as a security officer at Atlantic County Community College prior the Showboat employment, leaving the college for the better paying position at the Showboat. He has also been employed at the Tropicana, Golden Nugget and Atlantis as either a houseman, room service or at the front desk. He left the Golden Nugget, where he worked from 1980 to 1981, seeking "upward mobility." Several of the jobs which he had he left, and he was fired from others. He was

fired from the Tropicana, where he was employed from December 1981 to June 1982, as a result of a situation in which it was alleged that he had misappropriated food. Actually, according to Grant, a guest in the hotel had been barred from the facility, but the information was not placed in the computer. Security was watching his room and Grant came up with a check for some food which he had delivered.

The Division presented documentary evidence with respect to the various arrests. As noted, in many of these incidents, the matters were dismissed in municipal court for lack of prosecution. There are therefore no convictions with respect to those matters. The Division's evidence consists of police reports which contain hearsay as to what occurred, as well as the muncipal court records. In some instances, the reports contained statements purportedly taking from the "victim." This evidence is of course of little if any value in connection with this case since the alleged victims were not produced in the administrative hearing, let alone bothering to appear at the municipal court level. In some instances, Mr. Grant acknowledged his actions, giving some defense of why he acted as he did. Under the circumstances of this case, I **CONCLUDE** that the reports do not prove anything with respect to Mr. Grant's conduct other than what he himself already acknowledges. They cannot be relied upon in any way to prove the truth of the allegations against Grant.

DISCUSSION

The difficulty in a case of this nature is of course that Mr. Grant is required to prove his good character, honesty and integrity by clear and convincing evidence. In this case, initially, his activities in New York in the early 1970s involving the possession of marijuana and involvement in an armed robbery were obviously significant and, if fresher in time, would most certainly have a significant negative impact on his good character, honesty and integrity. Particularly in the case of the 1975 robbery, an incident which Grant acknowledges resulted from "bad judgment," it would be difficult to grant the license to an armed robber. However, that incident occurred over 13 years ago. There is no further indication in Mr. Grant's history of any similar type of activity such as to indicate that he is likely to engage in robberies or armed robberies. As such, in order to make a judgment of Grant's qualifications for licensure, it is necessary to turn to the more recent past.

A further difficulty in this case is the fact that while Grant has been arrested on numerous occasions, he has only suffered a few relatively minor convictions for these incidents. He was convicted in February 1986 of the November 1985 simple assault upon his fellow worker Johnson. Although he provided some indication of the differences which he was having with Johnson and the fact that he felt that Johnson was harassing and intimidating him, this does not seem to have been sufficient to establish any kind of self defense before the municipal court, which found him guilty. As such, I **FIND** that he was convicted of simple assault, N.J.S.A. 2C:12-1a. This is not an automatic disqualifying offense, but it has some relation to the good character, honesty and integrity determination.

In addition, to the above conviction, the respondent was convicted in 1984 of an assault upon his female friend in Egg Harbor Township. While he indicated that there was no physical proof of any injury, he was nevertheless convicted, fined $100 and ordered to make restitution of $60.

Except for these convictions, it appears that Grant has no other recent criminal or quasi-criminal convictions. The Division offered no documentary evidence concerning the money order incident of June 1987 in which Grant claims the matter was dismissed upon his payment of $200 to the bank. From the evidence presented, it is impossible to determine whether he actually did anything illegal in connection with that incident. The matter may well have been more in the nature of a civil dispute over the document in question and it appears to have been settled.

As for the various dismissed municipal court matters, I **CONCLUDE** that the evidence does establish that on occasion Mr. Grant has been willing to use his hands in a apparently inappropriate assaultive manner upon his girlfriends, wife, etc. While for the most part, he has not been convicted of these assaults, he nevertheless acknowledged hitting several of the persons involved. It is difficult to make a judgment, in the absence of testimony from both sides and in light of the scant and unreliable nature of the documentary evidence presented, whether Grant would have been convicted of these offenses had they been subject to a trial in municipal court rather than the dismissal which occurred when the complainants failed to appear. On the whole, I believe it better not to draw a conclusion as to whether or not Grant would have been convicted but

instead to consider them in a more general sense as to the good character, honesty and integrity issue.

Finally, of some interest is Grant's termination from the Tropicana Hotel for alleged dishonesty in 1983. Exhibit R-12, which is the memorandum and documentation of the hotel concerning that matter, indicates an "apparent(ly) misappropriation of food. Apparently, the guest, a Mr. Wrangler, had been asked to vacate the room. A steak dinner with Coca Cola and a cheese cake were delivered to the room by Grant. Wrangler claimed that the food was a gift from his family and that it was not a "comp," but it had not been charged to his room because of its "gift" nature. Apparently, the hotel believed that Grant had taken the food to the room for the patron without any intention of charging him. However. the documentation does not clearly define the theory of management as to what exactly was occurring. No witnesses were presented on the matter. Grant testified explaining his side of the story. At any rate, Grant was terminated.

Based upon all of the evidence presented, and keeping clearly in mind the fact that good character, honesty and integrity must be proven by clear and convincing evidence, I find it difficult to conclude that Mr. Grant has met his burden. Without for the moment considering his history in New York, his Atlantic City history is at best spotty. While he has avoided conviction on a number of occasions for incidents which might well have resulted in convictions for assault, he has been convicted of the assault on Mr. Johnson, and has also been convicted of the assault in Egg Harbor City. These incidents occurred in 1984 and 1985 respectively. In addition, on other occasions, Grant has shown some willingness to strike his acquaintances. When one combines this with the somewhat unsatisfactory answer which Grant provided as to exactly what was occurring in connection with the food at the Tropicana in 1983, one is left with the impression of an individual who, while he may walk the line between the legitimate and illegitimate, the licit and illicit, is not clearly above that line characterwise. His history does not display a clear and convincing record of proper conduct. If the burden in this case were preponderance of the evidence, perhaps there might be more of a likelihood of finding in Mr. Grant's favor. However, the legislature sought fit to set the burden upon a casino employee attempting to establish qualification for licensure at the significantly higher level of clear and convincing. Particularly where an individual wishes to be a security guard, with reponsibilities that involve necessity for care, discretion, tact, a high degree

of honesty and integrity, etc., any reasonable questions about an individual's background which raise doubts about whether he is of good character, must be resolved against the applicant in the absence of clearly satisfactory explanations.

Based on all of the above, I **CONCLUDE** that Mr. Grant has failed to establish by the requisite level of proof that he has the necessary good character, honesty and integrity required of a candidate for licensure as a casino employee under the requirements of N.J.S.A. 5:12-90b, incorporating the standards established in section 89b(2). Therefore, I **CONCLUDE** that Mr. Grant's application for licensure as a casino employee must be **DENIED.** It is so **ORDERED.**

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

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

November 3, 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

11-7-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 9 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

P-1 Letter from Michael Trageser

R-1 Letter of March 19, 1987, from New York City Police Department with attached criminal history record

R-2 Photocopy of criminal record cards

R-3 Atlantic City Police Department Reports referenced simple assault upon Mary Kay Grant

R-4 Atlantic City Police Department Reports referenced alleged incidents involving Annette Dildy

R-6 Atlantic City Police Department Reports referenced alleged simple assault on Reynaud M. Beverly, Jr.

R-7 Atlantic City Police Department Reports referenced alleged simple assault on Victoria Jenkins

R-8 Atlantic City Police Department Report referenced simple assault on William H. Johnson

R-9 Atlantic City Police Department Reports referenced alleged harassment of Mrytle Ross

R-10 Egg Harbor Township Municipal Court Complaint, State of New Jersey v. Clifford Grant

R-12 Tropicana Hotel documents referenced disciplinary action, dated June 6, 1983

R-13 Disciplinary Action Notice, dated April 28, 1983 and May 29, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-203
OAL DOCKET NO. CCC 1108-88
LICENSE NO. 44316-21
ORDER NO. 89-10-13

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

Complainant,

v.

GREATE BAY HOTEL AND CASINO, INC., t/a THE SANDS HOTEL AND CASINO OF ATLANTIC CITY AND RONALD ZOBY,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the administrative law judge having filed a partial initial decision/summary decision with the Casino Control Commission; and the Commission at its public meeting of March 8, 1989, having determined that the purposes of N.J.A.C. 1:1-12.5 are not well-served in this instance,

IT IS on this 14th day of March 1989, ORDERED that, purusnat to N.J.A.C. 1:1-18.7, this matter is remanded to the Office of Administrative Law so that the ALJ may render a decision with respect to penalty and thereafter resubmit the case to the Commission for its review and determination pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.1.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

PARTIAL INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. CCC 1108-88
AGENCY DKT. NO. 88-203

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
GREATE BAY HOTEL AND
CASINO, INC., T/A THE SANDS
HOTEL AND CASINO OF
ATLANTIC CITY, AND
RONALD A. ZOBY, LICENSE
NUMBER 44316-21,
Respondents.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)
Roberto Rivera-Soto, Esq., Vice President & Corporate Counsel, for respondent Sands Hotel and Casino
Wayne R. Rosenlicht, Esq., for respondent Ronald A. Zoby (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Record Closed: November 9, 1988 Decided: February 10, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 19, 1988 and an amended complaint dated May 17, 1988 seeking sanctions against the casino license held by the Sands Hotel and Casino (Sands) and the junket enterprise license held by Ronald A. Zoby.

The instant matter was transmitted from the Commission to the Office of Administrative Law (OAL) on February 17, 1988 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On May 2, 1988, a prehearing conference was conducted with the parties by Administrative Law Judge Steven L. Carnes, where the issues to be determined were agreed upon. Thereafter, on June 10, 1988, respondent Sands, joined by respondent Zoby, propounded and served its Notice of Motion to Dismiss or, in the alternative, for Summary Disposition. On July 10, 1988, the Division filed its Cross-Motion for Summary Decision. Thereafter, on September 1, 1988, a telephone conference was held at which, among other things, it was determined that the matter was ripe for summary decision and it was agreed between the parties that the matter was to be bifurcated with the issues of liability to be settled in the first instance, followed by a determination as to penalty, if any.

Subsequently, respondents propounded Motions to Reopen the herein matter after it had been declared closed on September 1988. The motion was denied by the undersigned by way of Decision on Motion dated December 6, 1988. The instant matter was, therefore, considered closed as of November 9, 1988. Extensions were requested and granted for the execution of the herein partial summary decision.

CROSS MOTIONS FOR SUMMARY DECISION

The parties, pursuant to N.J.A.C. 1:1-12.5, filed cross-motions for summary decision stating, in part, that no issues of material facts are in dispute. The matter

is, therefore, submitted on the pleadings, exhibits, affidavits and briefs of counsel. In accordance with the criteria set forth by our Supreme Court in *Judson v. Peoples Bank and Trust Co. of Westfield*, 17 N.J. 67 (1954), I determine that the herein matter is ripe for summary decision and shall proceed accordingly.

ISSUES

This matter having been preheard by the Honorable Steven Carnes, Administrative Law Judge, the following issues to be determined by this tribunal were agreed upon and set forth in the prehearing order as follows:

A. Did the respondent, Ronald A. Zoby, violate the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25 on at least 44 occasions by cashing counter checks to be issued on his approved casino credit account, not for his own personal use, but for the purpose of obtaining gaming chips for various junket participants and which gaming chips were then provided directly to the various junket participants named in count one of the complaint who were gambling and who used said gaming chips while gambling at the gaming tables where the counter checks were issued by Mr. Zoby?

B. Did the respondent Sands violate the provisions of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25, and N.J.A.C. 19:45-1.27 by allowing, permitting and facilitating Ronald A. Zoby's use of his approved casino credit account to provide gaming chips to various persons at the gaming tables who were participants on junkets organized and coordinated by Mr. Zoby to enable said persons to use the gaming chips provided to them by Mr. Zoby to engage in gaming activity?

C. Pursuant to N.J.S.A. 5:102g, did the respondent Sands violate the provisions of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and N.J.A.C. 19:45-1.27 by Ronald A. Zoby's use of his approved casino credit account to provide gaming chips to various persons at the gaming tables who were participants on junkets organized and coordinated by Mr. Zoby to enable said persons to use the gaming chips provided to them by Mr. Zoby to engage in gaming activity while at all times referenced herein, Ronald A.

Zoby was acting in furtherance of his junket representative arrangement with an agency of the Sands?

D. Did the conduct of respondent Ronald A. Zoby of providing gaming chips to various junket participants at the gaming tables of the Sands constitute the exercise of approval authority with regard to the authorization or issuance of casino credit to those junket participants, some of whom had been denied casino credit accounts on their own behalf, through the subterfuge of processing counter checks on his own approved casino credit account, violate the provisions of N.J.S.A. 5:12-102 l. (2)?

E. Pursuant to N.J.S.A. 5:12-102g, did respondent Sands violate the provisions of N.J.S.A. 5:12-102 l. (2) by virtue of the conduct of Ronald A. Zoby of providing gaming chips to various junket participants at the gaming tables of the Sands thereby constitute the exercise of approval authority with regard to the authorization or issuance of casino credit to said junket participants, some of whom had been denied casino credit accounts on their own behalf, through the subterfuge of processing counter checks on his own approved casino credit account, when Ronald A. Zoby, at all times referenced herein, was acting in furtherance of his junket representative arrangement with and agency of the Sands?

F. Did the conduct of respondent Ronald A. Zoby violate the provisions of N.J.S.A. 5:12-101a and b and N.J.A.C. 19:45-1.25 by the cashing of personal and business checks presented by junket participant Albert Miller thus enabling Mr. Miller to take part in gaming activity as a player without complying with the requirements of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25?

G. Pursuant to N.J.S.A. 5:12-102g, did the respondent Sands violate the provisions of N.J.S.A. 5:12-101a and b and N.J.A.C. 19:45-1.25 by virtue of the conduct of Ronald A. Zoby cashing personal and business checks presented by junket participant Albert Miller which thereby enabled Mr. Miller to take part in gaming activity as a player without complying with the requirements of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25, while

Ronald A. Zoby, at all times referenced herein, was acting in furtherance of his junket representative arrangement with an agency of the Sands?

H. Did the conduct of Ronald A. Zoby of regularly and routinely receiving cash given to him by junket participant Albert Miller at the beginning of the various junkets organized and coordinated by Mr. Zoby, and Mr. Zoby maintaining custody of the cash given to him by Mr. Miller and periodically returning the funds to Mr. Miller in various increments by providing Mr. Miller with gaming chips at the gaming tables, constitute violations of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c)9 and (g), and N.J.A.C. 19:45-1.15 in that Ronald A. Zoby, as a licensed junket representative, and the Ronald A. Zoby Company, as a licensed junket enterprise, performed the duties and functions of a general cashier with respect to the receipt of cash deposits from patrons and the refunding of such deposits to said patrons?

I. Did the conduct of Ronald A. Zoby of regularly and routinely receiving cash given to him by junket participant Albert Miller at the beginning of the various junkets organized and coordinated by Mr. Zoby, and Mr. Zoby maintaining custody of the cash given to him by Mr. Miller and periodically returning the funds to Mr. Miller in various increments by providing Mr. Miller with gaming chips at the gaming tables, constitute violations of N.J.A.C. 19:45-1.24 in that Ronald A. Zoby failed to prepare the required documentation and perform the required procedures to account for the receipt of cash deposits from patron Albert Miller and the refunding of such deposits to said patron?

J. Pursuant to N.J.S.A. 5:12-102g, did the respondent Sands violate the provisions of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c)9 and (g), N.J.A.C. 19:45-1.15, and N.J.A.C. 19:45-1.24 by virtue of the conduct of Ronald A. Zoby who regularly and routinely received cash given to him by junket participant Albert Miller at the beginning of the various junkets organized and coordinated by Mr. Zoby, and Mr. Zoby thereafter maintained custody of the cash given to him by Mr. Miller and periodically returned the funds to Mr. Miller in various increments by providing Mr. Miller with gaming chips at the gaming tables, while Ronald A. Zoby, at all

times referenced herein, was acting in furtherance of his junket representative arrangement with an agency of the Sands?

K. If any statutory or regulatory violation is proven, what is the appropriate penalty or sanction for such violation?

STATEMENT OF FACTS

The Sands is a corporation duly organized and existing under the laws of the State of New Jersey and licensed by the Commission to own and operate a legalized casino hotel.

Ronald A. Zoby is a resident of the Commonwealth of Virginia, residing at 1604 Bay Breeze Driver, Virginia Beach, Virginia. He has been licensed by the Commission as a Junket Representative under license # 44316-21. Zoby is also the sole proprietor of a licensed Junket Enterprise trading as the Ronald A. Zoby Company which holds Junket Enterprise #1015-70 and maintains vendor registration # 06004. Zoby employs other junket representatives in connection with the promotion and arrangement of gambling excursions to Atlantic City, New Jersey and other locations. He presently employs Leo Thomas, license # 4624-21, and Pacific Romeo, Jr., license # 50919-21.

Commencing in or about 1981, Zoby began an employment relationship with the Sands in the capacity of Junket Representative to bring gaming patrons to the Sands. Until December 1, 1985, Zoby was compensated by the Sands for his junket activities on a commission basis. The compensated commission depended upon the type of junket Zoby brought to the Sands and was calculated as a percentage of the "theoretical win" to the Sands based upon the extent of the gaming activity engaged in by the junket participants.

On or about December 1, 1985, the Sands and Zoby formalized the employment relationship by entering into a written "Junket Representative Agreement" for a period of two years from December 1, 1985 through November 30, 1987. On or about October 1, 1987, Zoby and the Sands entered into a new "Junket Representative Agreement" extending Zoby's employment with the Sands to September 30, 1988. The two Agreements required Zoby to provide patrons to

the Sands who generate gambling play yielding $1.5 million per year in "Gross Statistical Win" for the Sands. The gross statistical win is a calculation of the number of times an individual plays multiplied by the amount of the bet, times the number of opportunities to play. This calculation is used by casino personnel to determine how much of the gross statistical win is generated by the patrons of a junket toward the $1.5 million per year quota ascribed to the Junket Representative. Zoby has met his quota within the first seven months of each year during the terms of the Agreements.

On or about June 22, 1984, Zoby applied for and received a casino credit account with the Sands in the amount of a $5,000 limit. Subsequently, Zoby has applied for increased credit limits, all of which have been approved. Zoby's present approved casino credit limit is $85,000. Zoby utilizes his casino credit account for his own use and for the purposes of engaging in gaming activities with patrons at the casino. Respondent Zoby also utilizes his casino credit account for the purpose of obtaining gaming chips for use by his junket participants.

Pursuant to N.J.A.C. 19:45-1.27, all credit players must have their gaming activity rated. The player rating information is recorded on "player rating cards" by casino floorpersons or pit bosses.

By way of an investigation conducted by the Division, 44 occasions were initially identified whereby Zoby had caused counter checks to be issued against his approved casino credit account for the purpose of obtaining and providing gaming chips to various junket patrons. The investigation identified 12 of Zoby's junket patrons who received $208,000 in gaming chips directly from Zoby, rather than from the dealer of the games, for the purpose of engaging in gambling activities at the Sands. A subsequent investigation identified 18 transactions between February 23, 1986 and December 31, 1987 which demonstrated that Zoby had executed counter checks on his casino credit account to obtain gaming chips and then transferred the gaming chips to a variety of junket patrons. Zoby does not deny that he engaged in such activity.

A frequent patron of Zoby's junkets was the late Albert Miller of Norfolk, Virginia. Mr. Miller, a widower, died on September 14, 1986, at the age 79 years. Miller's last junket to the Sands with Zoby took place on August 22 and 23, 1986, less

than a month prior to his death. Albert Miller was denied a casino credit account at the Sands and, moreover, was the recipient of the Zoby gaming chip transfers. The purpose of the gaming chip transfers was to provide Zoby's patrons with gaming chips when the patron ran low and, therefore, not interrupt the flow of play by the patron.

The Division's investigation disclosed that Albert Miller borrowed money from other individuals who had come to the Sands on the same junket organized by Zoby. Zoby would routinely cash personal and business checks presented to him by Miller with the express knowledge that the cashing of Miller's checks were to enable Miller to pay his gaming debts with the other junket participants. This check cashing practice between Zoby and Miller occurred frequently over a period of three and one-half years, until the death of Miller in September 1986.

Mr. Zoby also made it a practice to take custody of large sums of currency from Miller and other patrons at the beginning of a junket trip to the Sands. Zoby understood that Miller did not wish to experience any delays in his gambling activity that would be occasioned by cash deposit-withdrawal procedures. Zoby, therefore, had an electronic paging device on his person in order that he could be paged and summoned by one or more of his junket patrons to provide them with gaming chips. It was under these circumstances that Zoby would process a withdrawal of the funds given to him by Miller and others by executing a counter check on his personal credit account.

Zoby did not maintain records or accounts on those occasions when Miller or other patrons gave him cash at the commencement of a junket trip. Similarly, Zoby did not maintain records accounting for the gaming chip transfers to Miller or other junket participants which constituted the reimbursements of the cash previously received by Zoby.

ARGUMENTS OF THE PARTIES

By way of briefs of law, the parties have set forth their respective legal arguments as it relates to the various issues to be resolved by this tribunal. The following is a summary of their respective legal positions.

RESPONDENT ZOBY'S POSITION

In support of his arguments, respondent Zoby relies upon affidavits submitted by various junket participants who patronized Zoby's junket tours to gamble at the Sands in Atlantic City.

At his Point I, Zoby refers to the Division's Counts I and V of its Complaint (The "Chip Transfer" counts) and observes that the Division alleges that Zoby's action violates N.J.S.A. 5:12-101a and the regulatory provision at N.J.A.C. 19:45-1.25(a). Those pertinent sections are set forth as follows:

> N.J.S.A. 5:12-101a provides:
>
> 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.
>
> N.J.A.C. 19:45-1.25(a) provides:
>
> 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 represents value to enable any person to take part in gaming activity as a player; or
>
> (2) Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in

> gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and N.J.A.C. 19:45-1.29; or
>
> (3) Make any loan which represents any losses incurred by any player in gaming activity without receiving from said player in exchange therefore, a check in the amount of said loan, which check shall conform with the Casino Control Act and these regulations.

Zoby asserts that neither by their respective terms nor their spirit, do the statute and regulation prohibit his conduct in this matter. More specifically, Zoby argues, in order to establish a violation of the statute or the regulation, the Division must demonstrate that: (1) a person licensed under the act (2) has provided a "loan," "credit" or "advance" (3) of "anything of value" (4) to "enable any person" (5) to take part in gaming activity as a player. Zoby argues that the critical focus of the pertinent inquiry is whether he has provided a "loan," "credit" or "advance" within the meaning of the statute and regulation by "giving" gaming chips to various junket participants.

Zoby contends that the Act lacks statutory definitions for the terms "loan," "advance" and "credit" which might give some special or technical meaning to the respective terms as they are utilized in N.J.S.A. 5:12-101a and N.J.A.C. 19:45-1.25(a). Therefore, he argues, the basic rule of statutory construction should be applied here where the terms in a statute are not defined therein, they are to be given their ordinary, plain and generally accepted meaning. *Levin v. Twp. of Parsippany-Troy Hills*, 82 N.J. 174, 182 (1980). Accordingly, he observes that the word "credit" as it is ordinarily used, indicates the existence of some "unpaid balance" on the part of one party to another. *Altshul v. Astor Coal Distributors, Inc.*, 125 N.J.L. 143, 145 (1940). Similarly, the term "loan," as defined by *Webster's New Collegiate Dictionary* (1980), means "a sum of money lent at interest." Closely akin in meaning is that ascribed to the term "advance" which, also defined by *Webster's New Collegiate Dictionary*, means "a provision of something before a return is received." Zoby contends that these terms have analogous meanings which contemplate a period of forbearance on the part of the party providing the "something of value" to another prior to being repaid. He contends that simply stated, the statute N.J.S.A. 5:12-101a

prohibits the act of lending to a patron "something of value" to enable him to gamble at a casino facility. (Emphasis in the brief).

Zoby argues that his encashment of counter checks issued on his casino credit account to obtain gaming chips "for" junket participants can hardly be characterized as either a "loan," "credit" or "advance" within the meaning of the statute or regulation. He contends that the Division bases its misplaced allegations on nothing more than a series of gaming chip exchanges between himself and some of his junket patrons. By focusing on this singular aspect of the transaction, he contends that the Division ignores that these transactions represent contemporaneous exchanges between Zoby and the respective junket participant.

Zoby argues that the undisputed facts demonstrate that he routinely held the gaming funds of some of his junket patrons. These monies would be returned to the junket participant upon request. He contends that a typical transaction occurred when a customer was involved in gaming play and requested reimbursement of his funds from Zoby. When Zoby lacked sufficient cash immediately on his person to return the junket patron's money, Zoby would draw down his own marker to reimburse the customer. A "gaming chip exchange" between Zoby and the junket participant, as cited by the Division, would thus result. Absent from the transaction, however, was any sort of forbearance on the part of Zoby prior to repayment suggestions of a "loan," "credit" or "advance" within the meaning of N.J.S.A. 5:12-101a and N.J.A.C. 19:45-1.25(a). Zoby contends that he merely made an appropriate offset from the respective junket participant's cash which Zoby was holding, but which was not immediately available on Zoby's person at the moment of the request.

Zoby further contends that he routinely entered into gambling partnerships with junket patrons who were close friends of his to satisfy his penchant for gambling. Under such partnerships, their money was co-mingled in the form of cash and gaming chips. Zoby asserts that he passed gaming chips to his partners without the expectation of repayment other than a proportionate division of the winnings or losses resulting from the partnership. He declares that this passing of gaming chips to his partner or partners was not for the purpose of providing a "loan," "credit" or "advance" within the meaning of N.J.S.A. 5:12-101a or N.J.A.C. 19:45-1.25(a).

Zoby asserts that the Division's allegation that his conduct was in violation of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(b) lacks substance. The statute and regulation provides as follows:

> N.J.S.A. 5:12-101b provides:
>
> 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...
>
> N.J.A.C. 19:45-1.25(b) provides:
>
> 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 N.J.A.C. 19:45-1.26, 19:45-1.27, 19:45-1.28, and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents.

Zoby contends that for the Division to establish a violation of either N.J.S.A. 5:12-101b or N.J.A.C. 19:45-1.25(b) it must demonstrate that; (1) a person licensed under the Act (2) has encashed a check (3) from a person (4) to enable that person to participate in gaming activities. He asserts that his conduct would be violative of the applicable statute and regulation only if he cashed a check from one of his junket participants to enable that person to gamble. Here, Zoby argues, the conduct cited by the Division in Counts I and V of its Complaint pertains to the Sand's cashing of Zoby's counter checks drawn on his casino credit account, rather than Zoby's encashment of junket participant's checks. He contends that the Division has failed to set forth any statement of facts to indicate that Zoby cashed even a single check from any of his junket participants. Therefore, he asserts, the

Division's allegations lack a most basic element required to establish a violation of N.J.S.A. 5:12-101b or N.J.A.C. 19:45-1.25(b). Zoby argues that there are no genuine issues of the material facts, therefore, he is entitled to summary decision as a matter of law.

Zoby further argues that, as a matter of law, he is entitled to summary decision with regard to the allegation that he was in violation of N.J.S.A. 5:12-101a and N.J.A.C. 19:45-1.25(a), because the Division has failed to demonstrate that his use of his casino credit account amounts to the providing of a "loan," "credit" or "advance" within the meaning of the statute and regulation.

At Point II in his brief, Zoby asserts that a summary decision should be entered in his favor as a matter of law for the reason that he never exercised any approval authority with regard to the issuance of casino credit by the Sands, pursuant to N.J.S.A. 5:12-101a and b. The Division alleges in Counts II and VI of it's complaint that Zoby's practice of utilizing his casino credit account to obtain gaming chips and provide same to his junket patrons, amounts to the exercise of authorizing the issuance of casino credit. The pertinent statute, N.J.S.A. 5:12-102 l. (2) provides, in part, that:

> **No junket enterprise or junket representative or person acting as a junket representative may:**
>
> ...
>
> **(2) Exercise approval authority with regard to the authorization or issuance of credit pursuant to section 101 of P.L. 1977, c. 110 (C. 5:12-101);**

Zoby asserts that this tribunal must look to the basic rules of statutory construction for guidance in seeking the true import of N.J.S.A. 5:12-102 l. (2). In so doing, this court must review the legislative history to ascertain the legislative intent of the statute. He contends that this portion of the Act is the product of the Legislature's deep concern for the possibility of "loan sharking" and other improprieties which might result if casino licensees were permitted to freely issue credit. *Second Interim Report, New Jersey Governor's Staff Policy Group on Casino Gambling*, p. 34-36 (1977). Accordingly, a system of check cashing by casino licensees, with deposit within a few days after patron presentation, was adopted as the form of credit which casino licensees may permissibly extend to patrons. N.J.S.A. 5:12-101b and c. The authority to approve such credit was vested in a

specific department of the casino licensee's business organization. *Report and Recommendation On Casino Gambling by the Commission of Investigation of the State of New Jersey*, 6E to 8E (1977). This limitation was suggested to the legislature in order to clearly fix responsibility for the issuance of credit. Id. at 8E. Consequently, the legislature promulgated N.J.S.A. 5:12-102 l. (2) to address those concerns and remove, among others, junket representatives from the casino credit decisional process.

Zoby contends that N.J.S.A. 5:12-102 l. (2) simply prohibits the participation of junket representatives in the decisions of casino licensees to either authorize or issue credit pursuant to N.J.S.A. 5:12-101 b and c. Accordingly, Zoby argues, N.J.S.A. 5:12-102 l. (2) is not concerned with whether a junket representative has extended credit on his own behalf to enable a person to gamble. A contrary finding would, he asserts, reduce the terms of N.J.S.A. 5:12-101a to a legal nullity, contrary to a basic tenet of statutory construction. In other words, a finding that N.J.S.A. 5:12-102 l. (2) prohibits identical conduct as in N.J.S.A. 5:12-101a would render the prohibitions in N.J.S.A. 5:12-101a mere surplusage in so far as the conduct of junket representative is concerned. Thus, the only rational interpretation of N.J.S.A. 5:12-102 l. (2) is that its provisions are wholly unconcerned with whether a junket representative has extended credit on his own behalf to casino patrons since such conduct is fully regulated by N.J.S.A. 5:12-101a. Rather, N.J.S.A. 5:12-102 l. (2) centers on whether a casino licensee, in extending credit to its patrons, has permitted a junket representative to exercise approval authority with regard to the authorization or issuance of casino credit on behalf of the casino licensee.

Zoby requests that summary decision be entered in his favor with respect to the allegations set forth in Counts II and VI and that the Division's complaint should be dismissed.

At Point III, Zoby contends the statutes and regulations cited by the Division in its allegations, as set forth in Count IV of its complaint, are inapplicable to Zoby's conduct with regard to his practice of maintaining junket participant Albert Miller's cash and providing Miller with gaming chips in return for the cash. The Division alleges that Zoby was in violation of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c) and (g), and N.J.A.C. 19:45-1.15 with respect to this activity which, Zoby again contends, the canons of statutory construction should be applied (citations omitted).

Zoby argues that the Division has selectively taken particular provisions of the statute and regulations, as cited in Count IV, to artificially manufacture an alleged violation of the Act. In so doing, the Division commences this exercise by citing, out of context, a proviso within N.J.S.A. 5:12-101b, which provides as follows:

> 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.

Zoby observes that the Division asks this tribunal to incorrectly believe that his conduct, in accepting Miller's gaming monies, is violative of this proviso. Zoby asserts that a reading of N.J.S.A. 5:12-101b in its entirety, however, produces a more rational construction.

Zoby refers to his discussion in Point II where he observed that the legislature was concerned with possible abuses resulting from casino licensees freely granting credit when it established a scheme of regulation for the casino industry. The provisions of N.J.S.A. 5:12-101 are a direct product of the legislature's concern. As pertinent here, the legislature set forth, within the operative language of subsection b of N.J.S.A. 5:12-101, strict requirements for the encashment of checks by casino licensees and other persons licensed under the Act. Recognizing that broad statutory enactments are susceptible to sweeping interpretations beyond which even the legislature had intended, Zoby contends that the proviso found in N.J.S.A. 5:12-101b was inserted to clarify the scope and meaning of the operative language of the statute. He argues that the proviso makes expressly clear that the terms of this statute are in no manner intended to prohibit the establishment of front money deposit accounts by casino patrons. The conduct of junket representatives is simply not implicated. Ignoring this rational and sensible construction of N.J.S.A. 5:12-101b, he asserts, the Division further cites equally inapplicable authorities in its futile attempt to find support for its groundless allegations.

By way of example, Zoby points to the Division's citation of N.J.A.C. 19:45-1.11(g), and maintains that the Division's reliance thereon is misplaced. He claims

that the conduct of licensed junket representatives is not within the contemplation of the regulatory mandate of N.J.A.C. 19:45-1.11, which is entitled "Casino Licensees Organization" and is directed solely at the functional structure of a casino licensee's business organization and the activities regulated by its provisions. Respondent sets forth a litany of the regulatory subsections, in summary form, which shall not be recited here.

Zoby argues that N.J.A.C. 19:45-1.11 lacks even a single reference, either express or implied, to licensed junket representatives and is at a loss as to how the regulation is applicable to his conduct. He contends that he is a licensed junket representative, not a casino licensee to which the regulation is directed.

Zoby contends that N.J.A.C. 19:45-1.11 neither requires him, as a licensed junket representative, to institute a "system of internal controls", establish certain departments within his junket enterprise, institute training programs, nor do any of the other acts required of casino licensees. In this light, the Division's attempt to take N.J.A.C. 19:45-1.11(g) completely out of context to selectively apply its terms to Zoby's conduct becomes abundantly clear. More pointedly, subsection (g) provides as follows:

> **Functions described in this section shall be performed only by persons bearing the particular title and licensed to the particular position, or persons licensed to supervise that particular position appropriate to such functions, under the Casino Control Act.**

Zoby maintains that the Division has conveniently ignored the fact that the term "functions" found within subsection (g) exclusively relates to the organizational structure of casino licensees, not junket representatives. Similarly, the terms of N.J.A.C. 19:45-1.15, also incorrectly cited by Division, deal solely with the operation of a casino licensee's cashier cage, rather than the conduct of junket representatives.

Zoby argues that a summary decision in his favor with respect to Count IV pursuant to N.J.A.C. 1:1-12.5 is fully warranted. The fact Zoby maintained custody of cash given to him by junket participant Albert Miller to be returned to him, in various increments, by providing Miller with gaming chips at the Sands' gaming

tables is not in dispute. Thus, this matter lacks any genuine issue as to any material fact. The only question presented is whether, as a matter of law, certain provisions of N.J.A.C. 5:12-101b, N.J.A.C. 19:45-1.11 and N.J.A.C. 19:45-1.15 may permissibly be taken out of the legislative context in which they were intended and applied to Zoby's conduct. This question, he contends, is most properly answered in the negative.

The Sand's Position

At its first point, the Sands contends that no cause of action exists under the "chip transfer" counts.

Respondent Sands observes that the Division's complaint, Counts I and V allege that Zoby would draw down on his own casino credit account and then transfer the chips received therefrom to another, who used such chips for the purpose of engaging in gaming. Based upon these allegations, the Division further alleges that the Sands is both substantively liable, essentially because it knew of these actions by Zoby and did not stop them, and vicariously liable for the actions of Zoby. The Sands maintains that no cause of action has been made out by the Division here and, hence, no liability can flow from either of the Division's theories against the Sands.

The Sands submits that the lynchpin used by the Division in asserting that Zoby's actions were unlawful is three-fold: (1) section 101 of the Act; (2) the regulations N.J.A.C. 19:45-1.25, governing counter check issuance which are in para materia with the provisions of section 101 of the Act; and, (3) the regulations, N.J.A.C. 19:45-1.27, which implement section 101 of the Act concerning the issuance of casino credit. The Sands argues that the statutory and regulatory provisions stand for propositions different from those advanced by the Division.

The Sands observes that Zoby maintained his own credit account with the Sands and, just as with any other patron who maintained a casino credit account, it was powerless to determine what a credit player will do with the funds drawn from a casino credit account once the patron draws the funds. By way of illustration, the Sands asserts that it has no authority to prevent a patron from using sums drawn from his casino credit account to tip a casino employee, i.e., a cocktail waitress.

Further, that there would be no violation of the Act, as alleged by the Division, where a patron draws down on his casino credit account and then passes the chips to his wife for play.

The Sands, in anticipation of the Division's response to its illustrations, suggests that the Division will contend that (1) Zoby is a person licensed under the Act, therefore, a different set of rules are to be applied to him and, (2) Zoby drew upon his credit account for patrons who had either been denied credit at the Sands or had their credit lines suspended by the Sands. The Sands claims that it would still not be a violation of the Act if Zoby were to draw down on his casino credit account and give his wife chips for play in the event that Zoby's wife had been denied credit or had her credit line been suspended at the Sands at the time of this transaction.

The Sands submits that nothing in Counts I and V of the Division's complaint even leads to the inference that Zoby's actions constituted anything which resembles the unlawful issuance of casino credit. In the absence of any allegation by the Division that Zoby drew down on his casino credit account with the intent to circumvent or subvert the Act and regulations, many different or innocent scenarios could provide a basis for Zoby's actions; i.e., he could have been "holding" a patrons funds or he could have been "partners" with a patron, given the fact that Zoby is not prohibited from engaging in gaming activity.

The fact that the Sands casino employees noted on player rating slips that Zoby "passed" gaming chips to a patron is proof of nothing more than that the "chip transfer" occurred. The rating slips, moreover, shed no light on what the provenance of funds represented by the chips might have been. Consequently, the Sands argues, the Division's allegations that the Sands is substantively liable under Counts I and IV of the complaint must fail for two separate reasons: First, the actions complained of are not unlawful and; second, the allegations regarding the Sands' knowledge of Zoby's actions are proof of nothing more than that the transfers were observed and recorded.

The Sands, as all other casino hotels in Atlantic City, maintains a player rating system, the purpose of which is to gauge a patron's play for marketing and credit issuance purposes. In the event Zoby were to draw down on his casino credit line and not place the funds into play, the system would show funds being drawn but no

gaming action occurring. Under such circumstances, the Sands would re-examine the credit account to determine whether the patron was merely using his casino credit account as a source of no-interest loans. By noting Zoby's transfers, it became clear that this was not the case and that the funds were being placed into play, albeit, not by Zoby who drew the funds.

The Sands argues that since the acts performed by Zoby were not unlawful and since it could not stop Zoby from dispensing his chips once he acquired them, no substantive liability can flow to the Sands. By the same token, it contends, no vicarious liability can flow to it even if Zoby's actions were unlawful.

The Sands asserts that N.J.S.A. 5:12-102 g. and h. were enacted by the Legislature as a consequence of the *Second Interim Report of the New Jersey Governor's Staff Policy Group on Casino Gambling (Second Interim Report)* at 37-39, where it was recommended, at 38, that:

> Junket operators, who will be representing a reconstructed Atlantic City to potential visitors around the world, should be subject to the same licensing standards applied to other casino employees, and indeed, should be legally considered the casino's agent. State authorities must be authorized to require disclosure of the terms of the junket operator's employment and the terms of each proposed junket. A violation of the rules on disclosure or conduct of junkets should subject the operator (or casino licensee) to an order of restitution or possible license suspension or revocation. (emphasis supplied)

The subsections of the Act, i.e, sections 102 g. and h. provide as follows:

> g. A casino licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it and for the terms and conditions of any junket engaged in on its premises, regardless of the fact that the junket may involve persons not employed by such a casino licensee.
>
> h. A casino licensee shall be responsible for any violation or deviation from the terms of a junket. Notwithstanding any other provisions of this act, the commission may, after hearings in accordance with this act, order restitution to junket participants, assess penalties for such violations or deviations, prohibit future junkets by the casino licensee, junket enterprise

> or junket representative, and order such further relief as it deems appropriate.
>
> ....

The Sands asserts that section 102 g. of the Act was enacted to insure that "[J]unket operators .... be legally considered the casino's agent." *Second Interim Report* at 38. Consequently, the Sands argues, the full panoply of agency law applies to the statutorily defined relationship between a casino licensee and a junket representative. It contends, therefore, that in order for the principal [casino] to be vicariously liable for the acts of the agent [junket representative], such acts must be performed by the agent in the course and scope of his agency. It observes that our Supreme Court adopted the definitions of agency as set forth at 1 Restatement, Agency 2d, section 228 at 504 (1958) in the matter of *Comm'l Union Ins. Co. v. Burt Thomas-Aitken Const. Co.*, 49 N.J. 389, f.n. at 392 (1967), [1] which states as follows:

> (1) Conduct of a servant is within the scope of employment if, but only if:
>
> (a) it is of the kind he is employed to perform;
>
> (b) it occurs substantially within the authorized time and space limits;
>
> (c) it is actuated, at least in part, by a purpose to serve the master; and
>
> (d) if force is intentionally used by the servant against another, the use is not unexpectable by the master.
>
> (2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

1. It is noted here that the Supreme Court in Burt Thomas did not adopt the definitions of agency as set forth above and as found in its footnote at 392. Rather, the Court recited the Appellant Division's reliance upon the *Restatement* definitions in reaching its conclusions, 91 N.J. Super. 13, 16 (App. Div. 1966), wherein the Appellant Court reversed the trial court's entry of summary judgment. 87 N.J. Super. 287 (Law Div. 1965). It is further noted that the Supreme Court reversed the Appellate Division and affirmed the trial court's summary judgment, subject to leave to plaintiff to file an amended complaint as provided by the Court's discussion. (49 N.J. 389, 396).

The Sands argues, among other things, that Zoby did not act as its agent by engaging in "chip transfers." In order for vicarious liability to flow to the Sands, there must be a finding that Zoby's acts were in the course and scope of Zoby's agency to perform the alleged illegal acts.

The Sands contends that the Act and its regulatory enforcement provisions must be considered penal in nature. Therefore, since the federal courts have been at the vanguard of determining the extent of corporate criminal liability on agency principals, the Sands suggests that a review of the standards would be instructive. It notes that a corporation will be held criminally liable for the acts of its agents if those acts were performed within the course and scope of the agency or within his/her apparent authority. *United States v. American Radiator & Standard Corp.*, 433 F. 2d. 174, 204 (3d Cir. 1979), cert. denied, 401 U.S. 948 (1971); *United States v. Armour & Co.*, 168 F. 2d 342, 344 (3d Cir. 1948). Acts within the course and scope of the agency are acts which are directly related to the performance of the type of duties the agent has general authority to perform and which are motivated by an intent to benefit the corporation. See: *United States v. American Radiator & Standard*, supra. at 204-205; see also: *United States v. Gold*, 743 F. 2d. 800, 823 (11th Cir. 1984), cert. denied, 469 U.S. 1217 (1985). The Sands asserts that since these standards are identical to those as set forth by the New Jersey Supreme Court for the imposition of vicarious liability, those standards apply to the instant matter which requires a finding that, if Zoby's actions were unlawful, then, by definition, it cannot be vicariously liable.

At its second point, the Sands claims that no cause of action exists under the "credit issuance" Counts II and VI. In sum, the Sands relies upon its position and arguments set forth before with respect to Counts I and V to assert that no liability can flow to it as a result of Zoby's acts which were not unlawful. It argues that even if Zoby's acts were unlawful, the Sands cannot be held vicariously liable on agency principles inasmuch as the very unlawfulness of the actions take them beyond the proper course and scope of Zoby's agency as a junket representative of the Sands.

Similarly, the Sands asserts that no cause of action exists under the "check cashing" Count III. The Division's complaint alleges that, at various times, Zoby cashed a series of personal and/or business checks for the late Albert Miller, a Sands

gaming patron. Zoby knew that the proceeds of his check cashing would be used by Miller for the purpose of gaming at the Sands. Based upon these facts, the Division alleges that Zoby violated the credit issuance provisions of the Act and the check cashing regulations and, therefore, the Sands is vicariously liable for Zoby's acts. The Sands maintains that common sense and reason constitutes the underlying purpose of the restrictions in the Act and regulations governing the cashing of checks. It cites the Second Interim Report where it was recommended at p. 36 that, "...employees of the casino/hotel are prohibited from personally cashing patron's checks." It argues that the genesis of the prohibitions set forth in N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25 lies not in the blanket prohibition the Division seeks to impose here but, rather, on prohibition based on reason.

The Sands argues, among other things, that the time frame with which the Division seeks to impose vicarious liability on the Sands fails to set forth the places and dates of the alleged encashment of the checks. It contends that none of the checks cashed were cashed on the Sands premises or as part of a junket organized and conducted by Zoby. Too the contrary, the Sands claims that such encashments occurred away from the Sands and separate and apart from the junket proper. Therefore, it argues, even assuming any impropriety on the part of Zoby, vicarious liability cannot be imposed on the Sands.

In its fourth point, the Sands maintains that no cause of action exists with respect to Zoby's "cash holding" of Miller's cash and at Miller's request. There is no dispute that Zoby did hold Miller's cash and did dole out cash or chips to Miller in order for Miller to continue his play at the Sands. Based upon these facts, the Sands observes, the Division alleges that Zoby; (1) violated the cash deposit account provisions of the Act and regulations, (2) violated the segmentation of duties provisions of the regulations, and (3) the Sands is vicariously liable for Zoby's acts. The Sands argues, among other things, that the Division fails to point to any one or more of the provisions in the Act or regulations which state that a junket representative is barred from holding a patron's funds.

The Sands contends that when N.J.S.A. 5:12-101b is properly read, this section of the statute acts as a grant of authority to a casino licensee to authorize the creation of cash accounts in addition to credit accounts. It argues that there is nothing in that section of the statute or any other provisions of the Act which

prohibits one person from holding funds for another gratuitously. The Sands argues further, as it did earlier, that it cannot be held vicariously liable for Zoby's acts if they are determined to be unlawful, because such acts would take themselves out of the ambit of the agency, thereby rendering the principal immune.

In conclusion, the Sands requests that the Division's complaints against it be dismissed with prejudice or, in the alternative, that summary disposition be entered in its favor.

THE DIVISION'S POSITION

The Division asserts that Zoby's advancement of gaming chips to junket participants at the gaming tables of the Sands with the use of his approved casino credit account violates N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and N.J.A.C. 19:45-1.27. It asserts that the conduct of Zoby with respect to Counts I and V are undisputed. It contends that respondent Zoby admits that he engaged in "gaming chip transfers" and that the Division has identified 62 such transfers over a period of 4 years. Further, respondent Zoby admits that the "gaming chip transfers" occurred at the gaming tables at the Sands and occurred as a result of Zoby's cashing counter checks at those gaming tables utilizing his own personal casino credit account to obtain the gaming chips. Zoby admits that the "gaming chip transfers" occurred for the express purpose of providing gaming chips to his junket participants so that said junket participants could engage in gaming activities at the gaming tables at the Sands. In some, if not all instances, the gaming chips were passed to the junket participants so that they could continue to gamble uninterrupted without any "delays" that could have been occasioned had the patrons been withdrawing their own credit or cash deposit funds.

It is further undisputed that Zoby is an individual who is licensed under the Act. The license that Zoby holds is a casino employee license issued by the Commission pursuant to N.J.S.A. 5:12-90 with an endorsement as a junket representative. The recipients of the gaming chips obtained from respondent Zoby through the use of his casino credit account were all participants on Zoby's junkets and they were present at the Sands pursuant to specifically identified junkets.

The Division asserts that liability on Counts I and V of its Amended Complaint focuses on the proper scope and meaning of N.J.S.A. 5:12-101 a(1), which states:

> 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 any 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 player to take part in gaming activity as a player;

The Division observes that provisions of a statute or regulation are to be read in pari materia and interpreted harmoniously to effectuate Legislative intent. It is a declared policy of this State that the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations is to be preserved. N.J.S.A 5:12-1b(6). Toward that end, the legislature declared that "... the regulatory provisions of this Act are designed to extend strict State regulation of all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided." (emphasis supplied). Id. To effectuate that declared public policy, N.J.S.A. 5:12-101a(1) establishes a broad prohibition against any credit related conduct engaged by licensees, either casino licensees or individual licensees, that does not occur within a specifically enumerated exceptions controlled by the requirements contained in the Act or Commission regulations.

The Division submits that "gaming chip transfers" between two individuals at the gaming tables of a licensed casino in Atlantic City constitutes unlawful credit or advance of something of value or which represents value when the transferor of the gaming chips holds the special status of the person licensed under the Act and is acting on behalf of a casino licensee in the capacity of a junket representative. The broad prohibitory language of N.J.S.A. 5:12-101a (1) applies to the situation where, as here, the licensed junket representative transfers gaming chips to other persons through the cashing of counter checks on the junket representative's casino credit account.

The Division contends that the conduct of Zoby in the instant matter completely distorts the proper operation and control of legalized gaming. An integral part of the operation and control of casino operations is the exchange of gaming chips with patrons at the gaming tables. N.J.A.C. 19:45-1.20 controls those situations where patrons may obtain gaming chips at the gaming tables from employees or agents of the casino licensee in order to gamble. Said regulation does not include a patron obtaining gaming chips from a licensed junket representative under any circumstances. Rather, N.J.A.C. 19:45-1.20(a) provides that a patron may obtain gaming chips at the gaming tables "(i) n exchange for cash, or issuance copies of Counter Checks presented by casino patrons in conformity with the provisions of N.J.A.C. 19:45-1.18 and 1.25."

The Division maintains that under no circumstances are licensed junket representatives an authorized source for obtaining gaming chips for casino play at the gaming tables of the casino licensee.

The Division asserts that the explanations provided by respondent Zoby to misgauge his conduct do not alter the legal analysis nor do they obviate culpability for his conduct. Zoby provides two explanations for the "gaming chip transfers", i.e., (1) that the gaming chip transfers occurred in order for Zoby to reimburse or refund cash previously given to him and hold by junket participants, (2) that the "gaming chips transfers" occurred in order to pool resources with other junket participants with whom Zoby engaged in a "gambling partnership" to satisfy his penchant for gambling. Respondent Zoby's position that both factual matters where "gaming chip transfers" occur are lawful and appropriate are premised on two representations: First, that the "gaming chip transfers" described in either matter did not consist of a "loan," "credit," or "advance" of anything of value or which represents value if there is no obligation to repay on the part of the junket participant and there is no act of forbearance on the part of Zoby; and second, that the "gaming chip transfers" did not include the acceptance of checks by Zoby from any of the junket participants.

The Division observes that the legal conclusion drawn by Zoby is arrived at by application of the statutory rule of construction that where words or terms are not defined in the statute they should be accorded their plain meaning. Respondent Zoby's application of the plain meaning rule to the words "loan," "credit," and

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"advance" result in his conclusion that N.J.S.A. 5:12-101a(1) precludes only lending relationships where there is a duty to repay a debt on the part of a borrower to the lender. Zoby's application of the plain meaning rule ignores the overall regulatory framework established to extend strict State regulation to all aspects of casino operations. The plain meaning rule, like all rules of statutory construction, is to be used only as a guide. Courts are often cautioned that such rules are only aids in construction and are not rules of law. *Allstate Insurance Company v. Malec,* 104 N.J. 1(1986). Courts are not to permit the intent of the Legislature to be subverted by language which, read literally, would appear to contravene that which the legislature actually intended. *In the Matter of Boardwalk Regency,* 108 N.J. Super. 324 (App. Div. 1981), Aff. and Mod. 90 N.J. 361 (1982), (App. Dism.) 459 U.S. 1081(1982). The Court in *Boardwalk Regency*, citing *Continental Cas. Co. v. Knuckles,* 142 N.J. Super. 162 (App. Div.) 1976, stated:

> First the attention should go to the purpose of the legislation. "Where a literal rendering will lead to a result not in accord with the essential purpose and design of the act, the spirit of the law will control the letter." *N.J Builders Etc., Ass'n. v. Blair,* 60 N.J. 330, 338 (1972). It cannot be better put than by Justice Heher in *San-Lan Builders, Inc. v. Baxendale,* 28 N.J. 148, 155 (1958). 'Reason is the sole of law.' [at 167]. [180 N.J. Super. at 343-344].

The Division asserts that N.J.S.A. 5:12-101a(1) is intended to be a broad prohibitory clause. It precludes a person licensed under the Act from cashing a check, making any loan, or otherwise providing or allowing any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activities as a player. The language of the statute includes not only lending relationships where there is an obligation to repay but also credit transactions that do not involve a "repayment" obligation. For example, respondent Zoby relies on a judicial definition of the term "credit" that narrowly circumscribes its scope. The Division contends that in fact, the term "credit" is defined quite broadly and includes reimbursement situations as well as lending relationships. The *Random House College Dictionary* revised edition (1980), includes the following definition of the word "credit": "Any deposit or sum of money against which a person may draw."

Furthermore, the Division contends, the definition of "advance" from *Webster's New Collegiate Dictionary*, copyright 1980, includes "a provision of something before a return is received." Respondent Zoby's own description of his gaming chip transfer activity fits squarely within the plain meaning of the terms "credit" and "advance" as defined in the dictionary. Respondent Zoby provides or allows his junket participants to establish "credit" or an "advance" with him by accepting the cash deposits and then effectuates draws against those deposits by returning gaming chips at the gaming tables to the patrons. As discussed by the Division in its brief but not recited here, the legislative history and the essential purposes and design of the Act, precludes such "credit" in the form of gaming chip transfers at the gaming tables of a licensed casino when the transferor of the gaming chips holds a special status of a person licensed under the Act and is acting on behalf of the casino licensee in the capacity of a junket representative.

The Division asserts that the legislative history of N.J.S.A. 5:12-101 and 102 supports its position that a junket representative may not provide gaming chips to junket participants through the use of the junket representatives personal credit account at the casino. Therein, the Division observes two aspects of casino operations in Atlantic City that bear the strictest of regulation is casino credit and junket activity. The means by which the legislature sought to impose strict control over junket activity, as it relates to the issue of casino credit, is two fold. First, the legislature adopted a check cashing system of credit rather than the Nevada "marker" system. (The Nevada "marker" system of credit was premised on a gentlemen's agreement to create an "IOU" between the casino and the patron). (See, N.J.S.A. 5:12-101b). Second, the Legislature chose to statutorily bar junket representatives from participating in any aspect of the credit approval or credit issuance process (See N.J.S.A. 5:12-102 l. (2)).

The means by which the Legislature sought to accomplish the goal of strict control over casino credit was to specify, through detailed and uniform procedures, all facets of the credit process, including the actual issuance of the credit at the gaming tables in the form of gaming chips. See: N.J.A.C. 19:45-1.20(a) and N.J.A.C. 19:45-1.25(a). Implementation of an approved credit line is effectuated by the execution of a properly prepared counter check which is a negotiable instrument signed by the patron payable to the casino licensee, and drawn on the patron's verified personal checking account. A counter check fully executed at the time of

the patron's signature which occurs immediately prior to the patron's receipt of an equal value of gaming chips.

The clear legislative import regarding casino credit, junket activity, and the interplay between the two mandates strict relationships of the conduct of licensed junket representatives. To accomplish this legislative mandate, all conduct of a junket representative related to gaming must fall within the purview of the Commission's oversight. To suppose that a licensed junket representative can act as the source of gaming chips at the gaming tables for his junket participants under any circumstances undermines the legislative goal in New Jersey to strictly control and monitor all credit and junket activity. Therefore, the prohibitory language of N.J.S.A. 5:12-101a(1) must be given its broadest possible interpretation such that even arguably impermissible conduct must be precluded, unless otherwise expressly provided for by the Act or regulations.

The Division contends that a "gambling partnership" arrangement, even if lawful between two private individuals, does not authorize junket representatives to advance gaming chips to junket participants. Notwithstanding Zoby's explanation, in part, that his "gaming chip transfer" activity was a mechanism whereby he satisfied his penchant for gambling by pooling the resources of junket participants who Zoby represents he engaged in a "gambling partnership", such activity is not expressly authorized under the Act. N.J.S.A. 5:12-100n permits a junket representative "to wager at any game in any casino in this State." The Division submits, however, that such section 100n of the Act does not authorize a junket representative to "gamble" vicariously through his junket participants in a so-called "gambling partnership " arrangement. This is especially evident when consideration is given the language of N.J.S.A. 5:12-101b.

N.J.S.A. 5:12-101b authorizes a casino licensee to accept a check "from any person to enable such person to take part in gaming activity as a player." When Zoby executes a counter check at the gaming tables at the Sands and the Sands accepts such checks for gaming chips, the intent of the statute which authorizes such "credit" is to enable Zoby individually to take part in gaming activity as a player - not to enable his junket participants to do so whether in the context of a "gaming partnership" or otherwise.

A recent case, relevant as to its reasoning, is *Gottlob v. Lopez,* 205 N.J. Super. 417(App. Div. 1985). cert. den. 104 N.J. 373 (1986), wherein the Appellant Division upheld the validity of a gambling debt of two private individuals. The parties to that action appear to have engaged in some type of "gambling partnership" and involved the passing of gaming chips from one person to another.

More specifically, Retta Gottlob executed a counter check at a gaming table of the Tropicana. After signing the counter check the dealer provided gaming chips of equal value. In total, $5,500 in gaming chips were obtained by Ms. Gottlob on her approved casino credit account at the Tropicana were given by her to Norma Lopez to enable Ms. Lopez to engage in gaming activity as a player. The issue presented in *Gottlob v. Lopez,* supra., was whether N.J.S.A. 5:12-101f rendered the debt owed by Ms. Lopez to Ms. Gottlob unenforceable since Ms. Gottlob admittedly did not issue such credit in accordance with N.J.S.A. 5:12-101b and the Commission regulations. The Court recognized that N.J.S.A. 5:12-101 was enacted to maintain public confidence and trust in the integrity of casino gambling, (N.J.S.A. 5:12-101b(6)) by making unforceable unregulated loans made between casino operators and gamblers. 205 N.J. Super. at 420. The Court concluded "the Casino Control Act does not purport to regulate the extension of non-licensees to gamblers." Id. Accordingly, the private chip passing arrangement between Ms. Gottlob and Ms. Lopez under circumstances not involving the casino licensee or any other person licensed under the Act, was held not to be governed by the requirements of N.J.S.A. 5:12-101.

In the instant matter, on the other hand, the "gambling partnerships" described in the affidavits submitted in support of respondent Zoby's Motion for Summary Decision do involve a licensee. It is undisputed that Zoby is a person licensed under the Act as a junket representative. By applying the rationale advocated at *Gottlob v. Lopez,* supra. , the obligations and responsibilities intendant to the issuance of credit and the practices and procedures regarding check cashing for gaming purposes pursuant to N.J.S.A. 5:12-101 do regulate the conduct of respondent Zoby. The process by which Zoby provided his "gambling partners" with gaming chips occurred in violation of the statutory regulatory mandates of N.J.S.A. 5:12-101b and Commission regulations. The authority of a junket representative "to wager at the gaming tables" vested by N.J.S.A. 5:12-101n

does not constitute a grant of authority to a junket representative to set himself up as a source of gaming chips for his junket participants.

The Division argues, therefore, that a "gambling partnership" arrangement, even if lawful between two private individuals, does not authorize a licensed junket representative to advance gaming chips to junket participants without complying with the requirements of N.J.S.A. 5:12-101b and Commission regulations.

As a consequence of Zoby's "gaming chip transfers" the Division alleges that the Sands was in violation of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 AND N.J.A.C. 19:45-1.27 by failing to take any action to stop or prevent Zoby from utilizing his personal casino credit account at the Sands and provide gaming chips to various junket participants at the gaming tables where the counter checks were issued by Zoby. The Division contends that the Sands is substantively liable for these violations and rejects its defense that it was powerless to determine what a credit player will do with funds drawn from a casino credit account once the patron draws the funds.

The Division observes that the Sands admits that the gaming chip transfers were observed and recorded by its games supervisory personnel at the gaming tables and that there were prepared player rating cards with respect thereto.The Division further observes that the Sands attempts to absolve itself from substantive liability by simply stating the conduct of Zoby was not unlawful. The Sands contends that its inaction in not taking steps to stop or prevent a known junket representative from acting as a source of gaming chips for junket participants was justified and not a basis for corporate liability.

The Division does not accept the proposition that the Sands could not have stopped Zoby from dispensing his gaming chips once he acquired them. Over the four year period that this activity occurred, it is incredulous to suppose that Zoby could not have been instructed or counseled by the Sands management that acting as a source for gaming chips at the gaming tables for his junket participants was not in accord with the Act and the Commission regulations. If the Sands had any doubt about the lawfulness of Mr. Zoby's conduct, witnessed and facilitated by its own supervisory personnel at the gaming tables, then it had an affirmative responsibility to make an appropriate inquiry with the regulatory authorities or to submit

appropriate changes to its internal control submission to reflect the conduct of its agent at the gaming tables. No such inquiry or submission was made for the obvious reason that the Sands was benefiting from its feigned ignorance or powerlessness.

The Division, therefore, requests that this tribunal find respondent Sands directly liable for the conduct of junket representative Ronald Zoby regarding Zoby's gaming chip transfers at the gaming tables to various junket participants which were witnessed, facilitated and permitted by Sands games supervisory personnel.

At Point II of its argument, the Division asserts that the passing of gaming chips by Zoby, a licensed junket representative, to various participants constitutes exercising approval authority with regard to the authorization or issuance of credit in violation of N.J.S.A. 5:12-102 l. (2). Counts II and VI of the Division's Amended Complaint raises N.J.S.A. 5:12-102 l. (2) as the legal basis for liability against Zoby. Despite, and notwithstanding, the authorization to accept checks for gambling under the exceptions of the general rule, N.J.S.A. 5:12-101a, certain specified entities and individuals have been expressly barred from engaging in any aspect of the credit approval or credit issuance process. One such class of entities and individuals statutorily barred from any aspect of the credit approval or credit issuance process is junket enterprises and junket representatives. N.J.S.A. 5:12-101 l.(2) provides:

> No junket enterprise or junket representative or person acting as a junket representative may: ...
>
> (2) exercise approval authority with regard to the authorization or issuance of credit pursuant to section 101 of P.L. 1977, c. 110 (C. 5:12-101).

The Division observes that it is neither disputed nor contested that on at least 62 occasions over a four year period Zoby provided to various junket participants gaming chips at the gaming tables for the express purpose of enabling said persons to take part in gaming activity as players. It asserts that by this activity, Zoby was exercising approval authority with regard to the authorization of casino credit as well as approval authority with regard to the issuance of casino credit. Through the subterfuge of processing counterchecks on his own approved casino credit account,

Zoby was able to funnel gaming chips to several persons who had been denied casino credit, to one person who had suspended credit privileges, and to several other persons who did not possess an approved casino credit account on their own behalf.

The Division maintains that the seriousness of the credit abuse practices evidenced by the conduct of Zoby is illustrated not only by the expressed legislative prohibition cited above which bars any involvement of a junket enterprise or junket representative in the credit authorization or credit issuance process, but by the entire regulatory framework pertaining to casino credit. The credit process is specific to a particular intended beneficiary - the patron who has applied for casino credit. It is that specific individual who has provided extensive personal and banking information to the casino [N.J.A.C. 19:45-1.27(a) & (b)], who has had that information verified by the casino [N.J.A.C. 19:45-1.27(c) & (b)], and who had obtained an approved credit account [N.J.A.C. 19:45-1.27(f)].

The credit relationship is unique to the specific credit applicant. This is evident by the interplay between the various subsections of N.J.S.A. 5:12-101. Since subsection a. is worded in the negative, it is clear that, except within the limits of any statutorily described exception, the described activity is unlawful. The statutory exception provided by subsection b. states:

> No casino licensee or any other 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.... (emphasis added).

The remaining provisions of subsection b. provide the technical requirements for cashing counterchecks, including N.J.S.A. 5:12-101b(4) which requires that "(t)he regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents." Thus, it is clear that the legislature intended no check cashing procedures be implemented unless the purpose was "to enable such persons to take part in the gaming activity as a player." (emphasis supplied). For these reasons the Division requests that this tribunal find judgment of liability

on the undisputed facts of Counts II and VI of the Division's Amended Complaint for violations of N.J.S.A. 5:12-102 l. (2).

At Point III of its brief and argument, the Division asserts that Zoby violated N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25 by cashing personal and business checks of Albert Miller, which checks did not conform to the requirements of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25. In Count III of the Division's Amended Complaint it seeks judgment that respondent Zoby violated the above statute and administrative regulation by cashing personal and business checks of junket participant Albert Miller on numerous occasions between November 1983 and the time of Mr. Miller's death in September 1986. The purpose of cashing such checks was to provide Albert Miller with cash so that he could repay casino gaming loans he had incurred with other junket participants, which loans had enabled Albert Miller to gamble beyond his immediate cash resources and beyond the funds that he had entrusted with respondent Zoby.

The Division asserts that Zoby knew that Albert Miller would borrow money from other junket participants when his own resources were exhausted from gaming activities during the course of the junket. At or about the time that the junket was to return to Virginia, Albert Miller would prepare a personal or business check payable to either cash or Ronald Zoby. The check would be presented to Zoby who would accept the check and provide cash to Miller. Mr. Miller would then distribute the cash to the various other junket participants who had loaned him money to gamble.

The Division contends that Zoby's check cashing practices for gaming patron Albert Miller presents a clear circumvention of the expressed language of the Act and Commission regulations as well as the purposes underlying those controls. Several statutory and regulatory provisions preclude junket representative Zoby from cashing a patron's checks for gambling purposes. N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1 state that: "no...person licensed under this Act...shall...(c)ash any check ... to enable any person to take part in gaming activity as a player..." unless otherwise provided in section 101 of the Act. (emphasis supplied). N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(b) then provide the exception to the general rule which states that: "no... person licensed under this Act ... may accept a check ... 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 subsection b (1) through b (4) are complied with (emphasis supplied).

The Division asserts that the cashing of Albert Miller's personal and business checks occurred after he was engaged in gaming activity and incurred gaming losses. Further legal support for the unlawfulness of Zoby's check cashing activity is found in the regulation N.J.A.C. 19:45-1.25(a)3, which states:

> (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:
>
> 3. Make any loan which represents any losses incurred by any player in gaming activity without receiving from said player in exchange therefore, a check in the amount of said loan, which check shall conform with the Casino Control Act and these regulations (emphasis supplied).

The Division observes that Zoby admits that he cashed at least 18 personal and business for Albert Miller and he was fully aware that these checks represented losses Mr. Miller had incurred at the gaming tables at the Sands from funds he had borrowed from other junket participants. Despite Zoby's statement that he never "loaned" money to Albert Miller, the acceptance of the 18 checks in exchange for cash constituted loans to Albert Miller. Mr. Zoby's payment of cash to Albert Miller in exchange for Mr. Miller's checks constituted a loan as that term is used in N.J.A.C. 19:45-1.25(a)3. The loan lasted for the period of time of the acceptance of the check until Albert Miller's bank or the Delmar Company's bank paid Zoby on the instrument upon presentation. N.J.A.C. 19:45-1.25(a)3 squarely addressed the "after the fact" situation where a person licensed under the Act, cashes checks for a player which represent gambling losses already incurred.

The personal and business checks accepted by respondent Zoby from patron Albert Miller did not conform with the Act and Commission regulations so the acceptance by Zoby violated N.J.A.C. 19:45-1.25(a)3. The checks were not made payable to the casino licensee as required by N.J.S.A. 5:12-101b(1) and N.J.A.C. 19:45-1.25(c)3, they were not processed in accordance with N.J.A.C. 19:45-1.25(c)

and (b), and they were not accepted at the cashiers cage as required by N..J.A.C. 19:45-1.13 and 1.25. Under such circumstances, the Division contends, Zoby could not lawfully accept from a junket participant personal or business checks for the purpose of cashing such checks to enable the patron to repay previous loans obtained for the purpose of engaging in gaming activity as a player. The Division maintains, therefore, that liability should be found against respondent Zoby for 18 violations of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25.

At Point IV of its brief the Division cites its Count IV Amended Complaint wherein it seeks judgment against junket representative Ronald Zoby for performing the functions of a general cashier with respect to the receipt of funds from Albert Miller for safe keeping deposit purposes, in violation of N.J.S.A. 5:12-101b and Commission regulations. The facts of Count IV are also not in dispute. Mr. Zoby has represented that he regularly received cash given to him by Albert Miller at the beginning of the various junkets organized and coordinated by Zoby to which Miller was a junket participant. Mr. Zoby further represents that he maintained custody of the cash given to him by Albert Miller and periodically returned the funds to Miller in various increments by transferring gaming chips obtained by Zoby through his credit account to Miller while at the gaming tables. Mr. Zoby further represents that this "service" was provided to Miller as was such service accorded to other junket participants namely; Will Walker and Willard Edwards. To refund the cash received from the gaming patrons at the commencement of the junket trip, Zoby admits that he utilized his approved casino credit account at the Sands to obtain gaming chips to give to the patrons as the reimbursements for the funds previously received.

The Division submits that a licensed junket representative may not lawfully act as the custodian of a gaming patron's funds held by the junket representative for the subsequent use of the gaming patron at a licensed casino in Atlantic City. The legal analysis pertinent to Count IV of the Division's Amended Complaint begins with N.J.S.A. 5:12-101b, which states in pertinent part:

> 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.

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The Division observes that Zoby argues that the above cited portion of N.J.S.A. 5:12-101b regarding the establishment of patron cash deposit accounts by casino patrons is inapplicable to his conduct. Mr. Zoby states that the "conduct of junket representatives is simply not implicated" in N.J.S.A. 5:12-101b. (Zoby brief, at 21). On the contrary the Division argues, the undisputed conduct of respondent Zoby in accepting cash deposits for subsequent gaming activity by junket patrons is implicated in N.J.S.A. 5:12-101b by the absence of any reference to persons or entities other than "casino licensees." Stated differently, N.J.S.A. 5:12-101b and Commission regulations at N.J.A.C. 19:45-1.11 and 1.15 establish exclusive authority in the casino licensees to receive cash deposits from patrons or subsequent use at the gaming tables and to refund such deposits.

The Division contends that had the legislature intended to permit junket representatives to hold patron cash deposits and to return the funds at the gaming tables in the form of gaming chips, it would have expressly included it in the relevant portion of N.J.S.A. 5:12-101b after "casino licensee" express mention of junket representatives or other persons licensed under the Act. Limiting the exception of permitting the deposit of cash by any person with a casino license is consistent with the legislative history, the declared public policies of the Act and the implementing regulations promulgated by the Commission.

The Division maintains that the conduct of respondent Zoby in this matter poses a grave threat to the integrity of the regulatory process. That regulatory process has consistently maintained both physical and functional restrictions on casino operations. As to physical restrictions, certain transactions are limited to occurring at the highly secured casino cage area. See, N.J.A.C. 19:45-1.14; *In Re Petition of Adamar of New Jersey*, 222 N.J. Super. 464 (App. Div. 1988). The purpose of physical restrictions is to permit both the casino licensee and the regulators to monitor certain sensitive transactions, including the deposit of cash by patrons for their subsequent use at the gaming tables. As to functional restrictions, the Commission has mandated that certain positions are to perform specific functions. With respect to the receipt of cash from patrons for front money deposit that function is exclusively maintained in the general cashiers position. N.J.A.C. 19:45-1.15 (b) l. b and vii. In the recent *Adamar* case, the Appellant Division upheld the Commission's determination that N.J.A.C. 19:45-1.15 (b) 1 i established in general

cashiers have the exclusive function of receiving cash from gaming patrons for counter check redemptions. Similarly, the Commission properly implemented N.J.S.A. 5:12-101b by specifying that general cashiers working within the highly secure and highly monitored casino cage area are the exclusive representatives of the casino licensee permitted to receive cash from patrons for subsequent use at the gaming tables. *Adamar* supra. at 471-472. In viewing the overall regulatory scheme to arrive at a proper interpretation of the credit provisions of the Act, *Adamar* also relied on N.J.A.C. 19:45-1.11(c) recognizing that the cashiers cage has the responsibility to maintain custody of patron funds normally associated with the operation of a cashier's cage. Id. at 471. This identical reliance was evident in *Playboy - Elsinore Associates v. Strauss,* 189 N.J. Super. 185 (Law Div. 1983), "it is clear that the thrust of the regulatory scheme is to require all credit transactions to be administered through the cashier's cage." 189 N.J. Super. at 193. The thrust of that same regulatory scheme requires all patron cash deposit transactions to be administered through the cashier's cage and not through a licensed junket representative. See also: N.J.A.C. 19:45-1.24.

The Division contends that further support for its position can be gleaned from the Legislature's definition of the position "junket representative" and the Commission's regulation controlling junket activity. Specifically, N.J.S.A. 5:12-29.2 and the corresponding regulation at N.J.A.C. 19:49-2.1 define the position "junket representative," in pertinent part as follows:

> **Any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participating, in any junket to a licensed casino, regardless of whether or not those activities occur in the State of New Jersey.**

Had the Legislature or the Commission deemed it permissible for a junket representative to act as a recipient of patron cash deposits funds for subsequent use at the gaming tables, it would have specified such conduct within N.J.S.A. 5:12-29.2 and N.J.A.C. 19:49-2.1.

The Division, therefore, requests that judgment of liability against respondent Zoby on the undisputed facts in Count IV of the Division's Amended Complaint for violating N.J.S.A. 5:12-101b , N.J.A.C. 19:45-1.11(c), and N.J.A.C.

19:45-1.15(b) as a consequence of Zoby's performing functions exclusively delegated to general cashiers and for violating N.J.A.C. 19:45-1.24 by failing to prepare or maintain any documents or records to evidence the cash deposits and reimbursements.

At Point V of its brief and argument the Division contends that respondent Sands is vicariously liable for the conduct of junket representative Ronald Zoby pursuant to N.J.S.A. 5:12-102g and the doctrine of respondeat superior. The Division observes that the Commission has consistently applied the theory of corporate or vicarious liability to casino licensees in its oversight of the casino industry. *State v. Boardwalk Regency Corporation,* OAL Dkt. No. CCC 6325-81, Agency Dkt. No. 81-32 (Initial Decision, dated June 8, 1982: Final Commission Decision, dated January 3, 1983); *State v. Greate Bay and Casino, Inc. ,Mervin Hoagland, Robert Dinstein, William Musso, and Roseland Freeland,* OAL Dkt. No. CCC 4105-85, Agency Dkt. No. 84-286 (Commission Opinion, dated November 12, 1986; Aff'd. App. Div. Dkt. No. A-550-86T6, Decided July 8, 1988).

The Division observes that even more significant is the Legislature's express application of the vicarious liability concept to casino licensee's for the conduct of junket representatives through the enactment of N.J.S.A. 5:12-102g, which states:

> **A casino licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it and for the term and conditions of any junket engaged in on its premises, regardless of the fact that the junket may involve persons not employed by such a casino licensee.**

The Division observes that it is undisputed that junket operators are legally considered the casino's agent. See, N.J.A.C. 19:49-1.1 ("agent" is defined as any person, including a junket representative or junket enterprise, acting directly or indirectly on behalf of the casino licensee). Accordingly, the full panoply of agency law applies to the statutorily defined relationship between a casino licensee and a junket representative.

The Division observes a series of significant and long established cases wherein the New Jersey Courts have held that an employer is liable for the acts of the employee where the employee is acting within the scope of his employment.

See, *Dan Horn v. Gibson,* 133 N.J.L. 406, 410 (Sup. Ct. 1945). In harmony with this holding, it is also well established that a principal will be held liable for the acts of his agent if the acts are within the scope of the agent's duties or employment. See, 53 *Am Jur* 2d, *Master and Servant* Section 4 through 6 at 441. The Doctrine of respondeat superior has consistently been applied to corporations, and New Jersey courts have held that a corporation is liable for the torts, wrongful acts or omissions of its officers, agents or employees acting within the actual or apparent scope of their authority or employment. See, *Brokow v. N.J.R. and Transportation Co. and Campbell,* 32, N.J.L. 328, 330 (Sup. Ct. 1867). Moreover, the term, "scope of authority" has been interpreted to mean that a master is liable if a servant acts in a manner that is even contrary to the master's orders. *Klitch v. Betts*, 89 N.J. 348, 351 (E. & A. 1916); *DiCosala v. Key,* 91 N.J. 159, 168-169 (1982).

The Division contends that New Jersey law and long standing policy holds an employer liable for the acts of his employees within the scope of employment - even if such person acts in direct opposition to the proper performance of their duties. Respondent Zoby's scope of employment is defined in its "Junket Representative Agreement" with the Sands. Zoby's scope of employment, as defined in those Agreements, provides for the following.:

> **Transportation by bus and plane of gambling patrons to the Sands; paid for by the Sands and arranged by Mr. Zoby.**
>
> **Mr. Zoby's maintenance of the Sands marketing location in Virginia including the specification that all phone lines be answered "Sands."**
>
> **Sands payment of Mr. Zoby's junket license fees.**
>
> **Mr. Zoby's responsibility to provide gambling patrons to the Sands.**
>
> **Mr. Zoby's, responsibility to generate gambling at the Sands, through these patrons, amounting to $1.5 million dollars in gross statistical wins per year.**
>
> **Payment by the Sands to Zoby of $400,000 per year for his performance of the contract based on providing the gross statistical win.**
>
> **An exclusive contract which specifies that Mr. Zoby arrange junkets for the Sands and which bars him from**

> junket work for any other hotels/casino during the contract term.

The Division refers to Mr. Zoby's sworn interview to describe some methods Zoby employed to facilitate and encourage the gambling play of Albert Miller and other junket participants during a junket are as follows:

> Taking patrons' suitcases to their hotel rooms so they can go directly to the gambling table upon arrival at the casino.
>
> Checking in and out of the hotel for them so patrons have maximum time at the casino games.
>
> Remaining on the casino floor with his patrons to enable him to fulfill the requests for service with the patron having to leave the gaming table.
>
> Zoby sworn interview, at 22-23, 73-74.

The Division asserts that it is clear from the Agreements and the sworn investigation interview of Zoby that his scope of employment includes engaging in activities to encourage and facilitate the amount of gambling by his junket patrons. This general kind of activity was envisioned by the legislature in defining legal junket activity. N.J.S.A. 5:12-29 states that a junket is:

> An arrangement the primary purpose is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for any purpose of gambling and pursuant to which, and as a consideration for which any or all of the costs of transportation, food, lodging and entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

The Division asserts that to determine whether acts are within the scope of employment, the activity must be so closely connected with what the servant is employed to do that the acts may be regarded as methods, even though improper ones, of carrying out the objectives of the employment. Clearly the Division asserts, supplying gaming chips to patrons at the gaming tables by utilizing one's personal

casino credit account; cashing personal and business checks for junket patron Albert Miller to provide him with cash to pay gambling loans from other junket patrons, and holding patron cash deposits for subsequent gaming use are all activities which serves as methods to facilitate and encourage gambling. Therefore, although unlawful, such conduct is "of the kind" that Zoby is contracted to perform for his principal, the Sands. Further, these activities were carried on by Zoby either at the gambling casino or within the context of his junket trips. Mr. Zoby's purpose in engaging in such activity was to facilitate the scope and extent of his clients activity to the benefit of the Sands as well as to himself.

The Division contends that respondent Zoby's conduct, which served to assist in meeting the gross statistical win criteria, is well within the scope of his employment under his Junket Representative Agreements with the Sands. Therefore, the methods he used, even though improper, to generate that win are also within the scope of the Agreements, rendering Sands vicariously liable for Zoby's unlawful acts.

The Division observes that the Sands argues that if the activity of Zoby is illegal it cannot be within the scope of employment. The Sands, therefore, concludes that all of the time of these actions Zoby was not an agent of the Sands. The Division notes further that the cases cited by the Sands in support of the Sands contention, do not support its position but rather supports the Division's position. (citations omitted).

The Division asserts that the Legislature unequivocally intended that casino licensees, whether they be corporations, partnerships, or sole proprietorships, are to be held liable for the acts of their officers, employees and agents. To this end, N.J.S.A. 5:12-129(5)provides that the Commission may:

> assess such civil penalties as may be necessary to punish misconduct and to deter future violations which penalties may not exceed $10,000 in the case of any individual licensee or registrant except that in the case of a casino licensee the penalty may not exceed $50,000.

For all of the foregoing reasons, the Division requests that this tribunal find respondent Sands vicariously liable for the unlawful acts of junket representative

Ronald Zoby performed in the course of his junket activities as described in Counts I through VI of the Division's Amended Complaint.

DISCUSSION AND CONCLUSIONS

The parties subsequently submitted supplemental memoranda of law which will not be considered here.

In order to place the issues of this matter into proper perspective, it is here observed that in order to further the public confidence in the integrity of casino operations, the regulatory provisions of the Act were 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..." N.J.S.A. 5:12-1b(6). As the Appellate bench stated in *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324, 341 (App. Div. 1981):

> There is nothing inherently wrong with sensitive, strict regulation. It has for many years been exercised in this State in certain industries. Liquor, with "its inherent evils," has been dealt with as "a subject apart." *Grand Union Co. v. Sills*, 43 N.J. 390, 398 (1964). The legislative power to regulate such a "nonessential and inherently dangerous commodity," as a wholly constitutional expression of concern for public health, safety, morals or general welfare, has been said to be almost without limit. Id. at 403-404. Horse racing, with attendant legalized gambling, "strongly affected by a public interest," has been held to be a "highly appropriate" subject for close regulatory supervision, *Jersey Downs, Inc. v. N.J. Racing Comm'n*, 102 N.J. Super. 451, 457 (App. Div. 1968), a condition recognized as desirable for many years, *Niglio v. N.J. Racing Comm'n*, 158 N.J. Super. 182, 188 (App. Div. 1978). We see every reason, including those expressed in N.J.S.A. 5:12-1b, for legalized casino gaming to take its deserved place among those industries. See *Bally Mfg. Corp. v. N.J. Casino Control Comm'n*, supra, 85 N.J. at 331. ...

This principle of "strict" regulation and control of licensed gambling activities is reenforced in the Act where, at N.J.S.A. 5:12b (13), the Legislature provided that:

> It is in the public interest that the institution of licensed casino establishments in New Jersey be strictly regulated and controlled pursuant to the above findings and

> pursuant to the provisions of this Act, which provisions are designed to engender and maintain public confidence and trust in the regulation of the licensed enterprises, ...

The Legislature also provided, among other things, that "... participation in casino operations .... shall be deemed a revocable privilege .... N.J.S.A. 5:12-1b (8).

The Division first contends that respondent Zoby violated section 101 of the Act and sections 19:45-1.25 and 1.27 of the regulations by the advancement of gaming chips to junket participants at the gambling tables of the Sands through the use of his approved casino credit account. As a consequence of Zoby's conduct, the Division contends that the Sands was in violation of sections 101 and 102 of the Act, and N.J.A.C. 19:45-1.25 and N.J.A.C. 19:45-1.27 of the regulations when it permitted, allowed and facilitated Zoby's use of his approved casino credit account to provide the gaming chips to the junket participants. Neither Zoby nor the Sands dispute the fact that Zoby engaged in gaming chip transfers which were observed by employees of the Sands. Respondents Zoby and the Sands contend that neither of them committed a violation of the statutes or regulations, as alleged.

It is first necessary to consider N.J.A.C. 19:45-1.27, the regulation which controls the procedures for granting credit to a casino patron, among other things. This comprehensive regulation provides for the issuance of casino credit to an individual patron only, rather than to a group or corporate entity. The regulation is specific with regards to the identity and verification of the patron; the patron's financial status including but not limited to personal and business bank accounts, income and assets, outstanding indebtedness, other casino credit limits, and; the patrons player rating, among other things. The purpose of this regulation is to provide credit to a qualified patron and to facilitate and enable said patron to participate in casino gaming activity. The credit is extended to the patron, through strict controls, and is interest free.

Thus, upon a close examination of N.J.S.A. 45:19-1.27, it is clear that the regulation was promulgated by the Commission, pursuant to section 101a(2) of the Act, to provide and extend credit to individual qualified casino patrons. There is nothing in the regulation which even implies that a patron may use his approved credit line as a "bank" for other gaming patrons. Rather, the regulation dictates that the patron's credit limit is determined, in part, upon a consideration of "... the

patron's player rating based on a continuing evaluation of the amount of frequency of play subsequent to the patron's initial receipt of credit. ..." N.J.A.C. 19:45-1.27(g)4.

The Appellate Court in *Adamar* recognized that the Act and regulations promulgated thereunder must be read so as to implement the legislative intent. It further observed that our Supreme Court has recognized "the strong state interest in promoting scrupulous conduct by the casino industry and regulatory officials." (citation omitted). The Court cites the Law Division in *Playboy-Elsinore Assocs. v. Strauss*, 189 N.J. Super. 185, 191 (Law Div. 1983), wherein it noted that "practices and procedures involved with the extension of credit by the casinos are among the most sensitive aspects of casino operations." Id. at 470. The *Adamar* Court continues to observe, as follows, that:

> Prior to the passage of the Act, there was strong resistance to allowing credit to patrons at all. See, *Report and Recommendations of Casino Gambling by the Commission of Investigation of the State of New Jersey*, (April 1977). The SCI was concerned with the potential for illegal diversion of funds and "strong arm" methods of debt collection. Id. at 2-E to 3-E. The particularized sections of the act governing credit obviously responded to this opposition and must be read as intending to accomplish several purposes: to provide for a traceable, efficient "paper trail" of credit transactions; to prevent "skimming," and to require prompt deposits of credit checks thereby allowing regulators to monitor the collection of debts. See: *Playboy Elsinore Assoc.*, supra, 189 N.J. Super. at 191-192.

Thus, the Act's credit provision, N.J.S.A. 5:12-101 and the regulation which flows therefrom, N.J.A.C. 19:45-1.27, circumscribes the manner by which credit shall be offered to the individual patron. Respondent Zoby's use of his casino credit account disrupts the "paper trail" of credit transactions to the extent that there is no identification of the user of the "chip transfer" once Zoby transmits the chips to the junket participant with those drawn from his account. Nor is Zoby credited with a player rating as a consequence of this transaction. The casino credit account to which Zoby puts his to use; i.e., to provide a "bank" for his junket patrons, was neither contemplated nor condoned by the Legislature or the Commission.

I **FIND** and **CONCLUDE**, that respondent Zoby's use of his casino credit account to draw against for the purpose of transferring gaming chips to junket participants is not a recognized use of such casino credit and, therefore, violates the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27.

The Sands sets forth a variety of arguments to exculpate itself from Zoby's "chip transfers." It argues, among other things, that it is absolved from any liability for Zoby's conduct under agency law because Zoby's acts were not performed in the course of or within the scope of his agency. The regulations promulgated by the Commission through its authority at N.J.S.A. 5:12-63c and N.J.S.A. 5:12-69 as found in N.J.S.A. 19:49-1.1 defines "agent" to mean "any person, including a junket representative or junket enterprise, acting directly or indirectly on behalf of a casino license."

The undisputed facts demonstrate that Zoby acted on behalf of the Sands by providing junket participants with gaming chips charged against Zoby's casino credit account. It is further undisputed that employees of the Sands were aware and had knowledge of Zoby's actions of transferring gaming chips to his junket participants by recording such transactions on Zoby's player rating form. With this knowledge, the Sands, its employees and/or agents neither advised Zoby of the limitations on the use of his casino credit account, pursuant to N.J.A.C. 19:45-1.27, nor dissuaded him in any manner from the use of the credit account.

I **FIND** that the facts in this matter clearly demonstrate that Zoby performed as an agent of the Sands as defined in *Comm'l Union Ins. Co. v. Burt Thomas-Aitken Const. Co*, 49 N.J. 389, 392 (1967).

I **CONCLUDE** that by its conduct of commission and/or omission, the Sands did permit, allow and facilitate Zoby's violations of N.J.A.C. 19:45-1.25, N.J.A.C. 19:45-1.27 and, therefore, was negligent in its duty to enforce the conditions of N.J.S.A. 5:12-101, as incorporated under N.J.S.A. 5:12-102g. The Sands, therefore, is strictly liable for Zoby's violations.

With respect to the Division's allegations that Zoby and the Sands were in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25, the undisputed facts in this matter clearly show that respondent Zoby did receive and cash checks from the late

Albert Miller, a frequent participant in Zoby's organized junkets to Atlantic City. Respondent Zoby cashed Miller's checks in order for Miller to repay money he had borrowed from junket participants. Miller borrowed the money from the junket patrons in order to continue to gamble at the Sands after he had lost the sums he had arrived with; generally $20,000 to $30,000 per junket. On other occasions, Zoby and Miller had borrowed money from each other for circumstances purported not related to the junkets or gaming activities.

The regulation here is explicit and unambiguous. N.J.A.C. 19:45-1.25 clearly states that:

> (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 license 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 represents value to enable any person to take part in gaming activity as a player; ... (emphasis supplied)

Respondent Zoby's cashing of Albert Miller's checks for the repayment of debts incurred as a consequence of Miller's gaming activity flies in the face of the regulation which prohibits such conduct. Notwithstanding that Zoby's cashing of Miller's checks occurred after Miller had borrowed money from other junket participants, the fact remains that Zoby's conduct enabled and encouraged Miller to gamble away monies beyond Miller's expected losses. This regulation, N.J.A.C. 19:45-1.25 does not contain any exception to the proscribed conduct evidenced by Zoby, a licensed agent employed by the Sands.

I **CONCLUDE** that, by its clear and unambiguous language, N.J.A.C. 19:45-1.25 was violated by respondent Zoby on one or more occasions when Zoby cashed the late Albert Miller's personal and business checks for the purpose of repaying debts incurred as a consequence of Miller's gaming activity as a player at the Sands.

I **CONCLUDE** that respondent Sands is vicariously liable for Zoby's conduct where, as here, Zoby was performing as an agent of and in the Sands behalf when

he violated the terms of N.J.A.C. 19:45-1.25. *Division of Gaming Enforcement v. Greate Bay Hotel and Casino, Inc. and Mervin E. Hoagland, et al* (App. Div.) Dkt. No. A-550-86T6, decided July 8, 1988 (unpublished) See also: *Resorts International Hotel, Inc. v. Salomone*, 178 N.J. Super. 598, 606 (App. Div. 1981).

I further **CONCLUDE** that Zoby's conduct in cashing Miller's personal and business checks constitutes a violation of N.J.S.A. 5:12-101a. and b., to which flows vicarious liability of respondent Sands under the doctrine of respondeat superior. *DiCosala v. Kay*, 91 N.J. 159, 172 (1982).

Based upon the uncontested fact that respondent Zoby provided gaming chips to various junket participants at the gaming tables of the Sands, the Division alleges that Zoby and, thus, the Sands stand in violation of N.J.S.A. 5:12-102 l. (2). The statute, in pertinent part, provides that:

> 1. No junket .... representative ... may:
>
> (2) Exercise approval authority with regard to the authorization or issuance of credit pursuant to section 101 of P.L. 1977, c.110 (c. 5:12-101) ...

The Division contends, among other things, that by virtue of Zoby's providing the junket participants with gaming chips at the gaming tables, such conduct constitutes the exercise of approval authority with regard to the authorization or issuance of casino credit to those junket participants, some of whom had been denied casino credit accounts on their behalf. The Division alleges that through the subterfuge of processing counter checks on his own approved credit account, Zoby and the Sands violated the above cited statute.

Respondent Zoby asserts that he neither extended credit to his junket participants nor did he authorize the approval of casino credit to such participants. He contends that he collected certain patrons money prior to their gambling activity, at their request, and returned their money upon request in the form of chips he acquired through his casino credit account.

The Legislature, through the enactment of section 101 of the Act, established the limitation of casino patron credit with the Commission subsequently

promulgating explicit and precise rules for the execution and extension of casino patron credit by way of N.J.A.C. 19:45-1.27. The limitation on casino patron credit serves a salutary purpose. As noted in the *Second Interim Report* at 34-35, the availability of ready, unlimited credit can have a "pernicious effect" upon the compulsive or imprudent player. *Resorts International Hotel, Inc. v. Salomone*, 178 N.J. Super. 598, 606 (App. Div. 1981).

The facts in this matter demonstrate that some of Zoby's junket participants had been denied casino credit accounts while other participants simply had not applied for such credit. Respondent Zoby collected and maintained large sums of money transmitted to him from junket patrons, as much as $30,000 at a time from Albert Miller, prior to the junkets arrival at the Sands. While at the Sands, Zoby was, in effect, the junket participant's "bank" while the participant gambled. Respondent Zoby kept no records or accounting of the amounts transmitted to him or transferred from him to the gaming junket patron. By this conduct, respondent Zoby circumvented the strict regulation governing casino credit and substituted himself as the approving authority for the issuance of casino credit. Respondent Zoby's explanation of his acts as an accommodation to his junket patrons and his attempt to equate this "banking" activity with his "checking the junket participants suitcases" upon arrival at the Sands simply strains credulity. The distinction between these two activities are obvious; i.e., there exists a strict regulatory scheme concerning the approval and issuance of casino credit, while none exists with respect to "checking junket participants suitcases."

I **FIND** and **CONCLUDE**, therefore, that by his conduct, as described above, respondent Zoby violated N.J.S.A. 5:12-102 l. (2).

Consequently, I FIND and **CONCLUDE** that the Sands, by allowing and permitting respondent Zoby's conduct as described above, is also in violation of N.J.S.A. 5:12-102 l. (2), pursuant to N.J.S.A. 5:12-102g.

It is clear that respondent Zoby acted in a manner inconsistent with the legislative intent of "... strict State regulation to all persons, locations, practices .... related to the operation of licensed casino enterprises .... N.J.S.A. 5:12-1b (6). Respondent Zoby completely ignored the explicit statutory provision at N.J.S.A. 5:12-101b and the controlling regulations under N.J.A.C. 19:45-1.11(c)9 and (g) and

N.J.A.C. 19:45-1.15 when he received and maintained cash deposits from Albert Miller. By his conduct, Zoby performed the duties and functions of a general cashier with respect to his receipt of cash deposits from Miller and the refunding of such deposits in the form of gaming chips. The statutes and regulations have no provision for an independent depository. Rather, the regulations specifically sets aside the cashiers cage in which general cashiers shall operate for, among other things, the receipt of customer deposits N.J.A.C. 19:45-1.15(b). There is no provision, either statutory or regulatory, which permits a junket representative to act as or substitute for, a general cashier.

I **FIND** and **CONCLUDE** that respondent Zoby violated the provisions of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c)9 and (g), and N.J.A.C. 19:45-1.15 for the reasons set forth above. I also **CONCLUDE** that respondent violated the provisions of N.J.A.C. 19:45-1.24 wherein he failed to prepare the required documentation and perform the required procedures to account for the receipt of cash deposits from the late Albert Miller.

It is apparent that respondent Ronald A. Zoby committed the violations of the Casino Control Act and the attendant regulations as alleged and charged by the Division. As a consequence of Zoby's violations and his employment by the Sands Hotel/Casino, it also is held to be in violation of the same statutes and regulations. I **CONCLUDE**, therefore, that the partial summary decision as requested by respondent's Zoby and the Sands is without merit and, accordingly **DENIED**. I further **CONCLUDE** that the Division of Gaming Enforcement has prevailed on the facts and law and, therefore, partial summary decision is hereby **ENTERED** in its favor with respect to the issues of liability for the violations.

Subsequent to review of this partial summary decision by the Casino Control Commission, the Division shall submit its application with respect to the penalty to be imposed upon respondents. Respondents shall submit their respective defenses to the Division's application with ten (10) days of receipt thereof.

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

recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

10 February 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

2/15/89
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 16 1989
DATE

Jaynee LaVecchia/K.S
OFFICE OF ADMINISTRATIVE LAW

dho

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-296
OAL DOCKET NO. CCC 03934-86
LICENSE NO. 52240-21
REGISTRATION NO. 42552-40

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

Complainant,

v.

MARIA NYDIA GUERRERO a/k/a MARIA MUNOZ DEMARTINEZ,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meetings of April 29, 1987, and May 6, 1987,

IT IS on this 16th day of May 1989, ORDERED that the initial decision is modified as follows:

1. In considering whether the respondent's conviction for a federal offense is analogous to the disqualifying offense of "tampering with public records or information," proscribed by N.J.S.A. 2C:28-7a(2), the ALJ erred in concluding that the Division had failed to prove a "purpose to defraud or injure." Respondent pled guilty and was convicted of one count of falsely representing her social security number in violation of 42 U.S.C.A. §408(g)(2). An essential element of the federal offense is

an intent to deceive. The respondent's conviction of the federal offense satisfies the culpability requirement for a third degree violation of N.J.S.A. 2C:28-7a(2).

Nevertheless, the offense to which the respondent pled guilty, falsely representing her social security number on a Claridge employment application form, is not comparable to a violation of N.J.S.A. 2C:28-7a(2) because such a form is not a public record. As to the alleged false representations on other forms which were the subject of the indictment, the charges were dismissed and the record does not support a finding that the respondent's conduct would constitute a violation of N.J.S.A. 2C:28-7.

2. The ALJ erred in concluding that the respondent had established her rehabilitation because, in the context of his other findings, such a conclusion was unnecessary. Absent disqualification under section 86(c), rehabilitation under sections 90(h) or 91(d) is not an issue that need be decided.

3. The ALJ erred in holding that disqualification pursuant to section 86(c)(4) must be predicated upon a disqualifying offense listed in section 86(c)(1) or (3). To the contrary, "inimical offenses" pursuant to section 86(c)(4) are precisely those offenses which are not "automatic" disqualifiers listed in sections 86(c)(1) or (3), but which indicate, due primarily to circumstances surrounding the offense, that participation by that individual would be contrary to the public interests underlying the Casino Control Act. See In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1 (Commission decision February 26, 1979).

4. The ALJ erred in interpreting the Commission's holding in State v. Ospina-Lopez, Docket No. 84-51 (Commission order January 14, 1985). Ospina-Lopez does not stand for the proposition that a

disorderly persons offense cannot be an "inimical offense." The ALJ in Ospina-Lopez had failed to identify the specific offense, criminal or disorderly, which purportedly disqualified the respondent under section 86(c)(4). Absent identification of a specific offense, there was no basis for disqualification under section 86(c). The Commission went on to hold under the facts of that case that the respondent's provision of a fraudulent social security number warranted his disqualification pursuant to section 86(b).

5. The ALJ erred in finding that the respondent had violated section 86(b) by her use of untrue or misleading information and further finding that the respondent failed to comport with the continuing duty to provide information under section 80(d) and thereafter failing to recommend any action in light of such violations, but instead recommending dismissal of the complaint. A finding of a violation of section 86(b) ordinarily results in a determination that the violator is disqualified. Accordingly, some disposition other than dismissal of the complaint is warranted.

6. The ALJ erred in failing to determine whether the respondent's provision of a false social security number on her PHDF-4 was intentional or in conscious disregard of the regulatory process.

7. Considering the record in its entirety, the respondent's conviction for misrepresenting her social security number in violation of 42 U.S.C.A. §408(g)(2) is analogous to a violation of N.J.S.A. 2C:21-4(a), a fourth degree offense and a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c)(1).

8. Considering the nature, seriousness and date of the respondent's disqualifying offense, i.e., misrepresenting her social security number to the Claridge Casino Hotel in 1982; the circumstances surrounding the offense, particularly her then recent, legal

immigration into this country; the fact that there are no other allegations of criminal activity before or since in either the respondent's place of birth or in this country; and with particular reference to the respondent's exemplary record of employment in the industry, which indicates a remarkable rise from diswasher to blackjack dealer in approximately two years time, the respondent has established clearly and convincingly that she is rehabilitated from her disqualifying conviction pursuant to N.J.S.A. 5:12-90(h) and -91(d).

9. Considering the entire record, including the respondent's admission that she invented the social security number provided on her PHDF-4 in 1982, other apparent fabrications on the PHDF-4 and her plea of guilty to essentially the same kind of intentional misrepresentations to the Claridge at approximately the same time, the respondent is disqualified for providing a false social security number on her PHDF-4 in violation of N.J.S.A. 5:12-86(b).

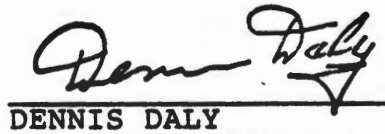
10. Considering that the respondent provided the false social security number on her PHDF-4 in 1982, and that she provided her correct social security number on the PHDF-2A filed in 1984, which filing occurred prior to her indictment on federal charges, and further considering the respondent's exemplary record in the industry subsequent to her violation of section 86(b), the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent is permitted to retain her casino hotel employee registration.

11. Given the unique circumstances of this case, the reasons cited above for a section 91(e) waiver constitute sufficient good cause pursuant to N.J.A.C. 19:40-1.3(d) to relax the five-year bar against reapplication which ordinarily follows a finding of disqualification pursuant to N.J.A.C. 19:41-8.8(a), and the respondent is permitted to retain her casino employee license.

12. For the reasons cited in support of both waiver pursuant to section 91(e) and relaxation pursuant to N.J.A.C. 19:40-1.3(d), and for the further reasons cited in support of a finding of respondent's rehabilitation from her disqualifying conviction, the respondent has established her good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license and the casino hotel employee registration of Maria Guerrero is dismissed for the reasons stated in the initial decision, as modified, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3934-86

AGENCY DKT. NO. 85-296

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

Petitioner,

v.

MARIA N. GUERRERO, A/K/A MARIA NYDIA GUERRERO, A/K/A MARIA MUNOZ DE MARTINEZ,

Respondent.

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

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

Record Closed: December 9, 1986 Decided: February 3, 1987

BEFORE **LILLARD E. LAW,** ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint before the Casino Control Commission (Commission), dated June 19, 1986, seeking an Order to revoke the casino employee registration and the casino employee license issued to respondent Maria N. Guerrero. The complaint alleges, among other things, that respondent Guerrero committed offenses which disqualify her from

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continued registration and licensure, and were inimical to the Casino Control Act (Act). The complaint also alleges that respondent lacks the requisite good character, honesty and integrity for continued registration and licensure.

PROCEDURAL ASPECTS

The Division filed its complaint in the instant matter with the Commission on or about June 19, 1986. Thereafter, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing was conducted on July 24, 1986, followed by a Prehearing Order, dated July 31, 1986. A hearing was held on September 30, 1986, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The parties requested and were granted leave to submit posthearing memoranda. The last submission was received by the undersigned on December 9, 1986, which constitutes the closing date of this record.

ISSUES

As agreed upon and set forth in the prehearing order, the issues for determination by this tribunal are:

A. Whether the respondent's conduct which led to her indictment by the Grand Jury of the United States District Court, District of New Jersey, alleging a violation of 42 U.S.C. §408(g)(2) and her subsequent entry of a plea of guilty thereto, constitutes a statutory disqualifying offense under one or more of those statutes enumerated at N.J.S.A. 5:12-86c(1) (N.J.S.A. 2C:21-1 et seq. (fraud); N.J.S.A. 2C:28-1 et seq. (falsification)).

B. Whether respondent is disqualified from licensure and registration under N.J.S.A. 5:12-86b, by reason of her purported failure to disclose and/or supply information which was untrue or misleading by virtue of her representing an alleged fraudulent Social Security account number on her Personal History Disclosure Form-4, by way of N.J.S.A. 5:12-80d.

C. Whether respondent's conduct, as alleged, is inimical to the Casino Control Act under N.J.S.A. 5:12-86(c)4, which constitutes an automatic disqualification to her licensure and registration.

D. Whether respondent's conduct, as alleged, establishes that she no longer possesses the requisite good character, honesty and integrity under N.J.S.A. 5:12-89b(2).

E. In the event the Division establishes a section 86c(1) disqualifier, the respondent has the opportunity to establish her rehabilitation, pursuant to N.J.S.A. 5:12-90h and/or N.J.S.A. 5:12-91d.

UNDISPUTED FACTS

The following facts are neither disputed nor contested and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

In or about May or June 1982, respondent completed an employment application with the Claridge Hotel/Casino (Claridge) and, subsequent thereto, completed an Internal Revenue Service Form W-4 (Employee's Withholding Allowance Certificate) together with a membership form for Local 54 of the Hotel Employees and Restaurant Employees International Union, all of which falsely represented respondent's Social Security account number to be 582-96-9707.

Respondent, who is a legal alien from Colombia, South America, and speaks no English, was subsequently issued a casino employee registration number 42552-40 and employed by the Claridge on or about July 1, 1982. Under her registration, respondent was employed at the Claridge as a dishwasher, busperson and floor sweeper in its Hotel/Casino restaurant, but did not possess a valid Social Security account number.

During her employment with the Claridge under her registration, respondent attended school and became qualified as a blackjack dealer in the casino industry. At a point not specified on the record, immigration officials advised respondent of the need and necessity to acquire a Social Security account number in order to be gainfully employed in this country. Respondent complied and was issued Social Security Account Number 136-76-0537.

On or about February 25, 1983, respondent was married to a citizen of the United States. Respondent's husband, who speaks English and Spanish, aided respondent in her completion of an application for a casino employee license. Respondent indicated her proper Social Security number on her Personal History Disclosure Form-2A for the casino employee license (P-2).

Subsequent to an investigation by a special agent with the Office of Inspector General of the United States Department of Health and Human Services, upon information supplied by a criminal investigator of the Immigration and Naturalization Service, it was determined that the Social Security Number 582-96-9707 had been issued to an individual other than respondent. As a consequence of the investigation, the Grand Jury for the District of New Jersey handed up a True Bill, four-count indictment alleging respondent to be in violation of 42 U.S.C. §408(g)(2), entitled "Penalties," which provides, in pertinent part, that it is a felony for:

> Whoever -
>
> . . .
>
> (g) for the purpose of causing an increase in any payment authorized under the subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—
>
> (2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to such other person; . . .

On September 11, 1985, respondent, with legal counsel, entered a plea of guilty to Count 1 of the Indictment before the United States District Court for the District of New Jersey. The Judgment and Probation/Commitment Order demonstrates that as the consequence of respondent's entry of a guilty plea to Count 1 (making false representations as to Social Security Number in violation of 42 U.S.C. §408(g)(2)), she was ordered to serve eleven (11) months in prison, which was suspended. Respondent was therefore placed on probation for a period of one year and ordered to pay a fine of $2,000. Counts 2, 3 and 4 of the Indictment were dismissed with the admonition that respondent would not be accorded a recommendation by the Court against deportation (P-1).

Respondent is currently employed at the Claridge as a blackjack dealer with exemplary performance evaluations and recommendation by her immediate supervisor (R-2, R-3, R-4).

Respondent is and has been employed as blackjack dealer with the Claridge since in or about February 1984. There has been no action by the Commission to suspend respondent's casino employee registration or license pending the outcome of the instant matter.

This completes a recital of the undisputed facts in this matter.

TESTIMONIAL EVIDENCE

Respondent, who understands some English but does not speak the language, testified through an interpreter and asserted, among other things, that she was not married and was living alone when she applied for employment at the Claridge. Subsequent to receiving the various application and disclosure forms, respondent sought out strangers who spoke and wrote in the Spanish and English languages to aid her in completing the forms. An individual, whom respondent does not now recall, helped respondent with the forms and advised respondent to indicate a Social Security number on the forms, although respondent had not been issued nor assigned a Social Security account number.

Respondent testified that it was at about the time she met the individual who is now her husband that she understood the need for a Social Security number. She was advised, through agents of the Immigration and Naturalization Service, of the procedure, and respondent then applied for and was granted Social Security Account Number 136-76-0537. Respondent, with the aid of her English-speaking husband, completed the Personal History Disclosure Form-2A in or about February 1984, which indicated her valid Social Security number (P-2).

Subsequent to respondent's completion of the Personal History Disclosure Form, she was issued casino employee license number 52240-21 and commenced employment as a blackjack dealer with the Claridge.

LEGAL ARGUMENTS OF THE PARTIES

The Division perceives the issues to be determined as to whether the respondent possesses the good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90b; whether the

respondent is disqualified from licensure and registration by N.J.S.A. 5:12-86b due to failure to comply with N.J.S.A. 5:12-80d and the federal conviction of making false representations as to Social Security number; and whether the respondent is disqualified from licensure and registration by N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, by virtue of the Division's assertion that respondent committed a violation of N.J.S.A. 2C:28-7a(2), third degree, or in the alternative, whether respondent's conduct is inimical pursuant to N.J.S.A. 5:12-86c(4).

As to disqualification pursuant to N.J.S.A. 5:12-86b, the Division cites that in State v. Orlando Ospina-Lopez, OAL Docket No. CCC 3131-84, decided by Commission (January 14, 1985), the Commission determined that a Social Security number is a material fact pertaining to qualification criteria within the meaning of N.J.S.A. 5:12-86b. State v. Conrado Berrio and Carlos Berrio, OAL Docket Nos. CCC 9931-83 and CCC 9692-83 (February 5, 1985), Comm. Order of Remand (October 31, 1985).

As to disqualification pursuant to N.J.S.A. 5:12-86c(4), the Division relies upon the matter in State v. Orlando Ospina-Lopez, which states that disqualification may be found where there is a criminal or disorderly persons offense identified that would warrant disqualification under section 86c(4), and that such a conclusion is not necessary where disqualification pursuant to N.J.S.A. 5:12-86b is demonstrated.

Respondent contends that the issues now ripe for legal argument are those identified as A. and B., pursuant to the Prehearing Order.

Respondent asserts that Issue A. deals with whether or not her conviction of 42 U.S.C. §408(g)(2) constitutes a statutory disqualifier under N.J.S.A. 5:12-86c(1). Obviously, it would be respondent's position that it does not.

Respondent observes that the Division believes the violation is akin to N.J.S.A. 2C:28-7a(2), tampering with public records. Further, it is the Division's position that said violation would be a third-degree crime.

If we are to assume that the federal violation is, in fact, akin to the above-mentioned State statute, respondent requests the Court to note that a violation of this statute is, in fact, a disorderly persons offense unless the actor's purpose is to defraud or injure anyone. Obviously, the State cannot show that was, in fact, the situation and

hence, had respondent been charged with the State crime, at best, she would have received a conviction in regards to a disorderly persons offense. Pursuant to N.J.S.A. 5:12-86c(1), a disorderly persons conviction of N.J.S.A. 2C:28-7 would not be a statutory disqualifier. It would have to be a conviction as a third-degree crime.

Again, it is respondent's position that using the Social Security number is not in itself a crime that is listed under N.J.S.A. 5:12-86c(1), and for the reasons stated above, would not be a disqualifier even under N.J.S.A. 5:12-86c(4).

In regards to issue B., it is respondent's position that she should not be disqualified for licensure due to her supplying a false Social Security number on her Personal History Disclosure Form. Respondent had only been in the country for a short period of time and could not read, write or understand English when she filled out the form. N.J.S.A. 5:12-86b states that an applicant should be disqualified for failure to provide information, documentation and assurances required by the Act or requested by the Commission, or failure to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to qualification criteria.

Respondent contends that the Social Security number is not required by the Commission, but rather, it is requested by the Division of Gaming Enforcement and, further, this is not a material fact. Obviously, if the number is not requested by the Commission and it is not a material fact, then respondent cannot be found to have violated N.J.S.A. 5:12-86b. The Division cites State v. Orlando Ospina-Lopez in stating that the Commission has determined that a Social Security number is, in fact, a material fact pertaining to qualification criteria. It is respondent's understanding that this stood for the proposition that supplying a false Social Security number is not a disqualifier. Further, it is respondent's understanding that various administrative law judges have decided this same issue both ways, depending upon the specific fact pattern before them. In this particular situation, respondent claims that she was not aware of exactly what a Social Security number represented when she, in fact, supplied a phony number. As soon as she realized the importance of a number, she obtained a valid Social Security number and reported that to her employer. Respondent suggests that this fact alone distinguishes this fact pattern from that of the Ospina-Lopez case.

Respondent contends that the supplying of a phony Social Security number was an unintentional act not done knowingly, and that the Casino Control Commission does not require the number to be on the application for licensure, nor is it a material fact. Respondent requests that she not be disqualified and that she be allowed to continue working in the casino industry.

DISCUSSION AND CONCLUSIONS

There is no doubt nor dispute that respondent used a fraudulent Social Security account number on her original Personal History Disclosure Form - 4 (PHDF) to obtain her registration and employment in the casino industry. The record clearly demonstrates that as a consequence of her conduct, respondent was subject to a criminal complaint and indictment before the Federal District Court of New Jersey, to which she entered a guilty plea to one of four counts of violating 42 U.S.C. §408(g)(2). Respondent's conviction on the one-count indictment resulted in a substantial monetary fine and lengthy probation without incarceration. The question now for determination is whether, under the facts and circumstances of this case, respondent is disqualified from continuing to hold the casino employee registration and license issued to her by the Commission.

The Division contends that respondent's conviction of a violation of 42 U.S.C. §408(g)(2) is equivalent to a third-degree offense under N.J.S.A. 2C:28-7a(2), one of the enumerated disqualifying offenses pursuant to N.J.S.A. 5:12-86c(1). N.J.S.A. 2C:28-7 is entitled "Tampering with public records or information," and section a. states that "A person commits an offense if he:

. . .

(2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or referred to in paragraph (1). . .

Paragraph (1) provides that an offense is committed if a person:

(1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government.

Granting the Division all favorable inferences, it has shown that respondent is guilty of violating N.J.S.A. 2C:28-7a(2). However, section b. of this statute defines a grading offense as follows:

> b. Grading. An offense under this section is a disorderly persons offense unless the actor's purpose is to defraud or injure anyone, in which case the offense is a crime of the third degree.

The Division has failed to establish affirmatively that respondent's purpose in committing the offense was "to defraud or injure anyone." The record shows that respondent committed the violation out of ignorance of the English language with the aid of another and for the purpose of obtaining employment in a foreign country. Notwithstanding her conviction of 42 U.S.C. §408(g)(2), the Division has failed to demonstrate that respondent's purpose was to defraud or to injure anyone. Absent these elements of purpose, the offense is not one of the third degree; rather, it is a disorderly persons offense.

I **CONCLUDE**, therefore, that respondent's violation of N.J.S.A. 2C:28-7 is a disorderly persons offense, rather than a crime of the third degree and, accordingly, is not an automatic disqualifying offense pursuant to N.J.S.A. 5:12-86c(1).

Pursuant to Issue B. in the Prehearing Order, the Division has shown that respondent failed to comply with N.J.S.A. 5:12-86b, by way of N.J.S.A. 5:12-80d, where respondent supplied information which was untrue and misleading for her casino employee registration on the occasion of her false representation of a Social Security account number on the PHDF-4. The record demonstrates, however, that no such misleadings or misrepresentations occurred upon respondent's completion of the PHDF-2A for her casino employee license (P-2). In the matter of State v. Conrado Berrio and Carlos Berrio, OAL DKT. Nos. CCC 9692-83 and CCC 9931-83, Comm. Order of Remand (October 31, 1985), the Commission "determined that a social security number is a material fact pertaining to qualification criteria within the meaning of N.J.S.A. 5:12-86b." (Id. at 3.) The Commission in Berrio effectively overruled its holding in State v. Orlando Ospina-Lopez, where the Commission held, among other things, that "A social security number is not included among the information that the Commission requires applicants to provide on a PHDF-4." (Id. at 2.)

Here, respondent is guilty of violating N.J.S.A. 5:12-86b, by her use of information which was untrue or misleading as to a material fact on the PHDF-4 for her casino employee registration. Moreover, respondent failed to comport with her "continuing duty" to supply the Commission with the true information concerning her valid Social Security account number when it became known to her, as required under N.J.S.A. 5:12-80d. It is not enough that respondent reported such true information on the PHDF-2A when she applied for her casino emplovee license. Respondent advanced untrue and misleading information in violation of N.J.S.A. 5:12-86b, and failed in her continuing duty to disclose to the Commission that the information was not true when it became known to her, in violation of N.J.S.A. 5:12-80d. I so **FIND** and **CONCLUDE.**

The Division alleges that respondent's conduct is inimical to the Casino Control Act, under N.J.S.A. 5:12-86c(4), by virtue of respondent's violation of N.J.S.A. 2C:28-7, as incorporated in N.J.S.A. 5:12-86c(1). Therefore, she is automatically disqualified to continue to hold her casino employee registration and license. Although respondent's violations of the Act are not to be treated lightly, the Division's allegations and assertions are rejected here, for the reason that it was unable to establish affirmatively that respondent committed a crime of the third degree. Rather, in an analysis of the elements of the offense under N.J.S.A. 2C:28-7, this tribunal found and concluded that respondent's violation rose only to a disorderly persons offense, conduct which falls below automatic disqualification to hold and continue registration and licensure. Orlando Ospina-Lopez.

I **CONCLUDE,** therefore, that respondent's conduct, albeit an infraction, was not inimical to the Casino Control Act under N.J.S.A. 5:12-86c(4). Accordingly, the Division's charge and allegation with respect to Issue C., as found in the Prehearing Order, is hereby **DISMISSED.**

Similarly, I **FIND** and **CONCLUDE** that the Division's charge and allegation of respondent's lack of good character, honesty and integrity is without merit and, therefore, must be **DISMISSED.**

Respondent's violation of 42 U.S.C. §408(g)(2) is the only offense for which she has a conviction, either criminal or civil. Respondent testified credibly that she has never

been in trouble (with law enforcement officials) in her native Colombia. Nor was any evidence proffered at this hearing of an arrest record prior to or subsequent to the violation of 42 U.S.C. §408(g)(2).

Respondent arrived in the United States from Bogota, Colombia, as a legal alien on or about May 15, 1982, when she was approximately 24 years of age. She had taken courses in the English language while in school in Colombia; however, she was inattentive during her studies because she did not believe she would have a need for the second language in the future. In any event, respondent has some understanding of spoken English language but neither speaks, writes or reads it with any degree of proficiency.

Even with her limited use and understanding of the English language, respondent has been able to improve her status in the workplace. Starting with menial jobs in the casino industry—i.e., dishwasher, floor sweeper, busperson—respondent availed herself of the opportunity for further schooling and instruction to become qualified as a blackjack dealer. Respondent now holds such a position and performs her duties in a commendable manner (R-2, R-3, R-4).

Although this tribunal has found and concluded that respondent's violation of 42 U.S.C. §408(g)(2) is less than an automatic disqualifying offense under N.J.S.A. 5:12-86c(1) and (4), it has carefully considered the eight rehabilitation factors pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to **FIND** and **CONCLUDE** that respondent has demonstrated, by clear and convincing evidence, that she is rehabilitated.

Accordingly, I **CONCLUDE** that no penalty or sanction shall be assessed against respondent; therefore, I **ORDER** that the complaint against Maria N. Guerrero be and is hereby **DISMISSED.**

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

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

3 February 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

February 3, 1987
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 6 1987
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESSES

Maria N. Guerrero

EXHIBITS

R-1	Letter of recommendation, dated September 6, 1985, from Church of the Holy Spirit, Ronald S. Falotico, Pastor
R-2	Dealer performance evaluation, dated 7-2-85
R-3	Dealer performance evaluation, dated 10-2-84
R-4	Letter of recommendation, dated 8-27-86, from Frederick Mittelstadt
P-1	Judgment and Probation/Commitment Order
P-2	Personal History Disclosure Form-2A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-192
APPLICATION NO. 74431-21
OAL DOCKET NO. CCC 9248-88
ORDER NO. 89-23-16

APPLICATION OF SHERRI L. HARRIS
FOR A CASINO EMPLOYEE LICENSE

ORDER OF REMAND

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 7, 1989,

IT IS on this 21st day of June 1989, ORDERED that this matter is remanded to the OAL for consideration of the following issues:

(1) The DGE is directed to produce the municipal court disposition of the complaint filed on December 3, 1982, against the applicant for theft in violation of N.J.S.A. 2C:20-3 (R1 in evid).

(2) Consistent with the N.J.A.C. 1:1-18.1(b), the ALJ should have considered all of the issues raised in the prehearing conference order. Accordingly, it is appropriate to determine whether the applicant committed a theft offense which would warrant disqualification under N.J.S.A. 5:12-86 and if so, whether she may, nevertheless, demonstrate her rehabilitation pursuant to N.J.S.A. 5:12-90(h), and

(3) The applicant is directed to product additional evidence of her good character, honesty and integrity.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9248-88
AGENCY DKT. NO. 89-EA-192

IN THE APPLICATION OF
SHERRI L. HARRIS FOR
A CASINO EMPLOYEE LICENSE

Ralph Fusco, Deputy Attorney General, for petitioner, Casino Control Commission (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Sherri L. Harris, appellant, pro se

Record Closed: March 9, 1989 Decided: April 24, 1989

BEFORE **RICHARD J. MURPHY,** ALJ:

Sherri L. Harris (applicant) applies to the Casino Control Commission (Commission) for a casino employee license pursuant to N.J.S.A. 5:12-1 et seq. The Division of Gaming Enforcement (Division) objects to this license because of Ms. Harris's arrest record and employment history in the casino industry. The issues are whether Ms. Harris is: (1) disqualified from licensure pursuant to N.J.S.A. 5:12-86g; (2) whether she can show rehabilitation under N.J.S.A. 5:12-91d; and (3) whether she can establish her good character, honesty and integrity by clear and convincing evidence under N.J.S.A. 5:12-89b(2) and 90h. For the reasons set forth, this opinion recommends that the Commission deny the application.

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PROCEDURAL HISTORY

The Division and applicant Sherri Harris requested a hearing on her license application on December 1, 1988, and the matter was transmitted to the Office of Administrative Law on December 12, 1988, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 17, 1989, to settle the issues and procedures and the matter was heard on March 9, 1989, in Atlantic City, at which time the record closed.

FINDINGS OF FACT

The material facts are not in dispute. The applicant disclosed to the Division that she had been arrested on September 6, 1982, for theft of over $500 contrary to N.J.S.A. 2C:20-3, in connection with her work as a salesperson at Steinbach's Department Store (R-1). She was prosecuted in Egg Harbor Municipal Court on January 31, 1983, as a disorderly person and she pled guilty to that charge and received a fine of $500 plus court costs and payment to the Violent Crimes Compensation Board. Ms. Harris admits that she took some money out of the cash register at Steinbach's (she can recall taking at least $100 in cash) and she claims that she did so because she was "just a kid" (she was 21 at the time) and she needed the money to pay her rent. She does not believe that she took $550 from the cash register, but she is unsure as to the exact amount. She is certain that on at least two or three occasions as a cashier at Steinbach's she allowed friends to take goods from the store without paying. She claims that one of her friends whom she allowed to steal clothing had an infant baby, but also was employed.

The second matter raised by the Division concerns the applicant's arrest in November of 1981 by the Norfolk Virginia Police Department for issuing a worthless check, which is argued an allegance to a violation of N.J.S.A. 2C:21-5. She was convicted of the offense and given a 12-month suspended sentence and a fine of $25. She explains that her roommate actually wrote the check on her account. She did not dispute the fact of her conviction for this offense.

The Division also raises what it views as unsatisfactory information concerning an applicant's employment history in the casino industry. The Division notes that the applicant was terminated by Trump's Castle in September of 1988 for absenteeism, which

she attributes to problems in caring for her infant son. Documents submitted by the Division establish that the applicant was terminated by Trump's Castle because of various violations of employee rules, including absenteeism, as well as for going on break without permission and for failing to punch in and out. She was also cited for being abusive to patrons. Ms. Harris explains her absenteeism by citing sickness of her son, and she explains that the stresses of serving as a cocktail waitress occasionally led her to talk "hard" to customers.[1] Ms. Harris states that the arrest occurred when she was considerably younger and she states that she is now in a more mature frame of mind and would never commit such acts again.

There is no dispute as to the above facts and I so **FIND.**

ISSUE

The prehearing order sets forth three issues, including disqualification under N.J.S.A. 5:12-86c(1) and rehabilitation under N.J.S.A. 5:12-91d. The third issue on this application for a casino employee license is whether Sherri Harris can establish by clear and convincing evidence her good character, honesty and integrity under N.J.S.A. 5:12-89b(2) and 90h. The third issue will be discussed first because it is the ultimate burden the applicant must bear.

DISCUSSION AND CONCLUSION

In order to qualify for a casino employee license, an applicant must "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." See, N.J.S.A. 5:12-89b(2) and 90b.

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[1] The Division's objection also stated that the applicant had been terminated from the Trump Plaza Hotel on June 26, 1988, for sleeping on the job, but the parties agreed at the hearing that this part of the objection was not factually accurate and it was not considered as part of the hearing.

Under N.J.S.A. 5:12-89b(2) the applicant must establish good character, honesty and integrity as a matter of fact and not merely as a matter of reputation. See, Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 369 (1982), appeal dismissed, 459 U.S. 1081 (1982). The applicant must establish good character, honesty and integrity by evidence that is both clear and convincing. Applicants have been found not to have established good character, honesty and integrity as a matter of fact where there is evidence that they have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation or swindling casino patrons by altering dice. See, Alter v. Div. of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Div. of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983).

In this case, the applicant admits her arrest and conviction for offenses of theft and issuing a worthless check. She freely admits that the theft offense was deliberate and she exhibited no evident remorse concerning stealing from Steinbach's cash register in 1982, or for allowing her friends to steal clothing. She dismisses the bad check offense as something her friend did, notwithstanding the fact that she was convicted for it, and she also cites her young age at the time. Given the intentional and deliberate nature of these offenses, I **CONCLUDE** that the applicant has failed to establish her good character, honesty and integrity by clear and convincing evidence. These offenses go to the heart of her function as a cocktail waitress responsible for making change and dealing with customers. She has presented no persuasive evidence to explain the offenses or to even present them in a more sympathetic way, other than to dismiss them as a discretion of youth, despite the fact that she was 20 years of age when she committed the theft in 1982. Given the nature of the offenses, she has not produced sufficient evidence of her good character, honesty and integrity to qualify for licensure.

In light of the above conclusion as to the applicant's failure to demonstrate her good character, honesty and integrity, it is not necessary to reach and resolve the other issues in the prehearing order as to disqualification and rehabilitation and I so **CONCLUDE.**

DISPOSITION

On the basis of the above findings of fact and conclusions of law it is **ORDERED** that the application of Sherri L. Harris for a casino employee license be denied.

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

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

4.24.89
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

4/24/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 25 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ct

LIST OF EXHIBITS

R-1 Summons issued December 3, 1982, by the Egg Harbor Township Municipal Court

R-2 Applicant's disciplinary record at Trump's Castle

WITNESS LIST

Sherri L. Harris

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-29
APPLICATION NO. 2285-70
OAL DOCKET NO. CCC 4275-88
ORDER NO. 89-6-17

APPLICATION OF HISTORICAL DEVELOPERS OF PENNSYLVANIA, INC. FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 8, 1989,

IT IS on this 10th day of February 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Historical Developers of Pennsylvania, Inc. for a casino service industry license is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4275-88

AGENCY DKT. NO. 88-CSI-29

HISTORICAL DEVELOPERS OF PENNSYLVANIA, INC.,

Petitioner,

v.

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

Respondent.

Donald M. Kaplan, Esq., for petitioner (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

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

Record Closed: November 16, 1988 Decided: December 27, 1988

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

Historical Developers of Pennsylvania, Inc., seeks a casino service industry license from the Casino Control Commission. In a letter dated May 26, 1988, the Division of Gaming Enforcement called to the attention of the Commission certain circumstances surrounding the applicant and its president, Thomas Scannapieco. These circumstances specifically involved an extortion of monies from Historical Developers, Inc., ("HD") a corporation in which Scannapieco was 50 percent owner prior to the formation of Historical Developers of Pennsylvania, Inc. The Division reported that it did not object to the application for licensure, however, it recommended that a hearing be held for the creation of a full record to determine the qualifications of the applicant for licensure. The Casino Control concurred in this recommendation 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.

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A prehearing was held before Honorable Stephen W. Thompson, ALJ, on August 1, 1988, and a Prehearing Order was issued on August 5, 1988. A hearing was then held before Honorable Jeff S. Masin, ALJ, on October 27, 1988, at the Haddonfield Municipal Court. Following completion of the hearing, additional time was provided to allow the applicant to submit character references. These were received and the record closed on November 16, 1988.

ISSUES

The Prehearing Order established the issues for consideration at the hearing as:

A. Whether petitioner's sole stockholder committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C-27-2, bribery of a public official.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino service industry licensure, pursuant to N.J.S.A. 5:12-92(c) and N.J.A.C. 19:43-1.3c.

C. If applicable, whether petitioner may demonstrate rehabilitation.

CONCLUSION

Having considered the evidence presented, which includes both the testimony of Mr. Scannapieco and Bruce R. Lesser, Esq., counsel for the corporation who also was involved in representing Historical Developers, Inc., and Mr. Scannapieco's interests therein, the testimony of Barbara K. Friese of the Division of Gaming Enforcement, the documentary evidence, and the transcripts of testimony from the criminal trial of United States of America v. Leland Beloff and Robert Rego, held in the United States District for the Eastern District of Pennsylvania in March and June 1987, as well as the character references, I **CONCLUDE** that Historical Developers of Pennsylvania, Inc., has established by the requisite level of proof that it is qualified for licensure as a casino service industry. More specifically, I **CONCLUDE** that Mr. Scannapieco did not commit acts constituting a statutory disqualifer pursuant to N.J.S.A. 5:12-86c(1) and that he has the

requisite good character, honesty and integrity for casino service industry licensure, pursuant to N.J.S.A. 5:12-92(c) and N.J.A.C. 19:43-1.3c.

In arriving at the above-stated conclusions, I have determined that Mr. Scannapieco did not know that his business partner in Historical Developers, Inc., John Bennett, had actually made payments of bribes to Philadelphia City Councilman Leland Beloff and his Administrative Assistant, Robert Rego. I **FIND** that Mr. Scannapieco did believe that he was being "ripped off" by his business partner, Mr. Bennett, and that although he was perhaps naive as to the possibility that Bennett's story of being solicited for a bribe was in fact true rather than a ploy and a scheme for Bennett to steal money from the company, there is no evidence at all of a credible nature to support any conclusion that Mr. Scannapieco agreed to the payment of bribes. While he can be properly criticized for not having called to the attention of law enforcement authorities the possibility that Bennett's story of a bribe solicitation was true, I **CONCLUDE** that given his mind set that Bennett was stealing from him and the financial situation in which he found himself, his actions, while not completely appropriate, were not sufficiently inappropriate as to constitute a significant mark against him. While Mr. Scannapieco cannot be considered to be wholly free from criticism for not having more assertively investigated the exact nature of Bennett's actions and not having called them to the attention of the authorities, I cannot find that his failure to do so was motivated by anything other than concern for his precarious financial situation and his belief that his ability to do anything about Bennett's apparent thievery was greatly limited or perhaps only persuable through civil proceedings. I **FIND** that Mr. Bennett's testimony was on the whole credible and that more specifically, his testimony as to his lack of belief of Bennett's story of being solicited for a bribe was truthful.

EVIDENCE

Thomas Scannapieco was the chief witness for the petitioner. Mr. Scannapieco graduated from St. Joseph's University in Philadelphia with a degree in physics in 1971 and then worked in a cooperative program involving engineering and physics, performing classified work for the United States military. He held a confidential and secret level clearance and continued to work under this authority with General Electric. Eventually, GE determined to consolidate its anti-submarine warfare work in Syracuse and Mr. Scannapieco was given an option to move there or transfer to a different technology.

Since there were no other opportunities which interested him in the Philadelphia area and he did not wish to relocate, he remained in the Philadelphia area and purchased some "shells" in the area near the art museum. He became involved in renovating these vacant townhouses during evenings and weekends and ultimately decided to work full time on these projects. Although he had no experience, he did the work himself and apparently enjoyed it. In 1975, he left GE and completed his first renovation in mid 1976. He then moved into it and purchased another building. Ultimately, as a result of contacts which he made with an architect through the purchase of one of the renovated homes by the architect's relative, he became involved in restaurant architecture and became a general contractor, as opposed to a renovator. He continued this work until about 1979.

Mr. Scannapieco had made the acquaintance of John Bennett while at St. Joseph's. Bennett was a classmate who had transferred to premedicine and had become a medical doctor. In 1979, Bennett was the head of an emergency room at a hospital in the Philadelphia area. The men's wives were close friends. In 1979, Bennett advised Scannapieco that he wished to become involved in a real estate investment. Scannapieco was aware of several possible "tax credit" projects in the Spring Garden area and, because he wanted to get out of the general contracting business and go into development, he joined with Bennett, found a building and structured a certified historic rehabilitation. Bennett invested and supplied other investors. Scannapieco and Bennett formed a corporation known as Historical Developers, Inc., each owning 50 percent of the stock. Scannapieco operated the company and served as its president. Bennnett remained a full-time doctor while Scannapieco used the company as his only means of support. The business grew to become one of the largest firms doing historical renovation work. Bennett became convinced in early 1983 that he could make more money from the development business than from his hospital salary and he went full time with the company, although he retained his medical license.

According to Scannapieco when Bennett became involved full time, problems began to develop. Bennett believed that he was fully qualified to run a development business. Major problems and arguments arose over the men's different ways of dealing with clients. According to Scannapieco, he took the "long-term view" fostering long term relationships with contractors, suppliers, etc., extending them credit, attempting to avoid litigation. Bennett, on the other hand, took a "short term attitude" "burning his bridges behind him" holding contractors to the lowest price, even where they had underestimated,

holding the retainage as damages, and adopting a generally litigious, confrontational attitude. Bennett did not see quality as the primary concern while Scannapieco did.

Approximately one year after Bennett's arrival as a full time participant in the business, Scannapieco realized that the situation was "not going to work." In mid 1984, he determined that he had to get out of the business. He discussed his concerns with his attorney, Bruce Lesser. Bennett and Scannapieco had no written agreements and a single signature checking account. In the course of operations, Scannapieco determined that Bennett was "dishonest." He learned that Bennett was using the corporation and its money to promote his own schemes. He was expanding into the medical building business, developing medically oriented projects such as free standing testing facilities, etc. Scannapieco had gone along with this devleopment, but he learned that Bennett was diverting time from other projects to the establishment of these medical businesses. While the arrangement was supposed to be 50-50, in fact he learned that Bennett had started a free standing CAT scan facility and was working on it on his own without conferring with Scannapieco. Scannapieco began reviewing the company's files and learned that the development of this CAT scan center was set up as a 50-50 deal between Bennett and Bennett's wife, cutting Scannapieco out completely.

In addition to the medical building issue, Scannapieco learned that Bennett had been involved with Bennett's father in supplying certain carpet to the historic developments which was not as represented to be. Bennett's father was involved in the carpeting business, but according to Scannapieco, his carpet was not up to snuff and as a result most of the carpet bought by the business came from Wilton Carpet in New Jersey. On one particular project, Bennett came to Scannapieco with dense, high quality carpet which was of comparable price and quality to that which was being supplied by Wilton. Scannapieco agreed to the purchase of this carpet from Bennett's father and it was purportedly installed. Approximately six months later, Scannapieco had occasion to take a sample of this carpet to show to a client and noticed that it was of the same color but clearly not of the same depth of pile as that which had been presented as the sample by Bennett. Scannapieco felt that this was the result of a scheme on the part of Bennett to divert corporate funds for his own use.

Another instance of Bennett's scheming arose as a result of fees paid to interior designers. Bennett's wife was one as was Scannapieco's sister. The company was

attempting to give them essentially equal amounts of work. Scannapieco learned that Bennett had written approximately $50,000 worth of checks to his wife without Scannapieco knowing it and that in the same period his sister had received only about $10,000 or $15,000. Apparently two different fee schedules were being used.

Although Scannapieco determined that he had to get out of the business arrangement with Bennett, he felt quite "vulnerable." He had all of his assets tied up in the business and when he went to speak to Bruce Lesser and told him the situation, he explained that he was "scared to death," that he had no unencumbered assets and that he could not even pay legal fees. He had determined that Bennett had approximately $100,000 in stocks which were not involved in any of the company's business. During this time, which was the spring and summer of 1984, Scannapieco did not feel that he was in a position to separate himself totally from Bennett. Initially, he did arrange with Bennett to separate different types of responsbilities between the two partners. This did not work out very well and in January 1985, they signed a non-overlap agreement.

The company had become involved in the development of a property at 328 Spruce Street in Philadelphia. This was a "private transaction," not involving government. The property was purchased for tax credits and was to be sold to investors. A building permit was obtained which permitted the developer to take down a brick wall in the rear of the property which would allow for the placement of two parking spaces. After the work was done, there was a good deal of community opposition to the removal of the wall, which apparently had some historic value. Scannapieco was asked to come to a neighborhood meeting to discuss the concern. When he arrived, he found 30 or 40 people in the yard who were quite adamant that wall be put back up. After the meeting, he was approached by Robert Rego, who was identified as the administrative assistant to Councilman Leland Beloff, who was the Philadelphia City Councilman for the councilmanic district within which the property lay. Rego explained that if Historical Developers did not put back up the wall, it would receive no work within the district or any other work within Center City. Although Scannapieco argued against rebuilding the wall, the councilman and neighbors would not back down. The wall was ultimately put up at a loss to the developer of many thousands of dollars resulting from both the cost of the work and the loss of the parking spots, which diminished the value of the property.

In August 1984, the company was trying to gain approval as developer for the Charles Building. This project was to be undertaken at the request of the Philadelphia Redevelopment Authority, which had advertised for proposals. On December 6, 1984, the Redevelopment Authority approved Historical Developers as the Developer. Dr. Bennett was responsible for this project, since the partners had by that time separated their tasks to a considerable extent. Bennett filled out the application for approval, which Scannapieco signed as president of the corporation. In addition, Scannapieco participated in strategy sessions concerning the application.

According to Scannapieco, he had no involvement with the Charles Building Project after approximately December 6, 1984 and certainly after January 8, 1985, when a non-overlap agreement was signed which completely separated and distinguished the projects upon which the men were working. The Charles Building was assigned to Dr. Bennett. Bennett was aware by this point that Scannapieco wished to get out of the business, but Lesser had advised Scannapieco that he would have to "work his way out." It would be necessary to wait until the company's credit lines were paid back at the end of the year, at which point a break would be more feasible. A new corporation was actually formed with a separate checking account as of March 31, 1985. An agreement for the sale of Scannapieco's interest in the company to Bennett was signed on June 30, 1985.

In late February or early March 1985, Bennett advised Scannapieco that he had been approached by Robert Rego with a demand for $25,000 to be paid in order to introduce legislation in Philadelphia City Council authorizing the development of the Charles Building by Historical Developers. According to Scannapieco he found this story "incredible." He had previously done four redevelopment projects of up to $350,000 purchase price which was considerably more than $100,000 involved in the Charles Building purchase price. He had never been solicted for a bribe before and did not see why Rego would make such a request of Bennett when Scannapieco was president of the company. Scannapieco believed that Bennett was scheming to obtain the $25,000 for himself. He did not believe Bennett's story that Rego had told him to have a $25,000 check drawn to a New Jersey carpet company (not Wilton Carpets) as a method of transfer. Scannapieco saw this as a "nice and cozy" arrangement because of Bennett's father's involvement in the carpet business. He thought it was an obvious attempt by Bennett to divert corporate funds which would then either go to the father or to an affiliate. He did not authorize the writing of the checks and told Bennett he would not

approve it. Ultimately, in late March or early April he learned that Bennett had two checks drawn totalling $25,000 to a carpet company in Haddonfield. The timing of the checks for the purchase of carpet was inappropriate in that it was much too early in the job for such a purchase. There was no need for the company to be placing deposits on carpet and it had never had to do so before. Eventually, he learned that a resolution had been approved by City Council naming HD as the developer on February 28, 1985.

John Bennett testified in the two trials held in the United States District Court for the Eastern District of Pennsylvania in the prosecution of Leland Beloff and Robert Rego for, among other things, extortion by public officials. Beloff and Rego were convicted on July 2, 1987, of all charges against them. During his testimony at the two trials, Bennett was asked if he had discussed the payment of the bribes with his partner Scannapieco. He said that he did report the bribe request to his partner and they discussed whether or not to make the payments and originally decided not to do so. However, the money was ultimately paid and according to Bennett's testimony at page 588 of the transcript of June 26, 1987, he discussed the demand with Scannapieco, who authorized payment out of the HD account of one check for $5,000 and another for $20,000. According to Bennett, he later had these changed on the books to show payments from his personal account.

Mr. Scannapieco adamantly denied that he ever authoized a payment of $25,000 for carpet from the New Jersey company involved or that he ever authorized payment of any bribes to Beloff and Rego. Scannapieco was not charged in the Beloff matter. Bennett testified under a grant of immunity. Scannapieco was never contacted concerning the matter and first learned of Beloff's involvement from news reports of the trial. He also learned that other payments had been made by Bennett for other projects which did not involve him. These projects came at a time when he was no longer associated with Scannapieco, except for some passive involvement in certain passive investments in buildings which were not completed, in the process of being rented or in the early stages of projects where the partners could not agree on the exact details of the separation.

Specifically, with respect to the Charles Building, Mr. Scannapieco explained that he believed that Dr. Bennett had been involved in a major breach of confidence with respect to this property. The agreement worked out with the Redevelopment Authority

had called for below market rate rentals for relocatees from the site of the proposed Philadelphia Convention Center. It appeared that with the favorable responses received for these low rates, rentals would be easily arranged. However, no space was rented and Bennett was telling the Redevelopment Authority that no deals were being worked out. Scannapieco believed that Bennett was attempting to rent the sites for market rates which he felt was improper. Scannapieco had put up $4,500 in capital for this project and upon his demand, this was returned to him on September 1, 1985.

After the separation, Mr. Scannapieco formed Historical Developers of Pennsylvania, Inc., of which he is 100 percent owner. Originally, he intended to continue rehabilitation of properties on the certified list of historical sites. However, because of a change in the tax code, this became financially less practical and as a result he began to pursue "non-tax break" properties. He is now "just a plain developer of economic projects."

The witness explained that in the performance of his work, he seeks to meet the highest standards of integrity and foster the highest reputation for his honesty and the quality of his work. He has been involved in many regionally significant projects, receiving awards for a number of his developments, and has been involved in community service fighting the drug problem in his neighborhood and donating property to be used by the police department as a mini-precinct. Among other awards he received the Governor's Award for Crime Prevention.

On cross-examination, the witness denied any involvement with 925 Pine Street, another project which he claimed was Bennett's throughout. He denied that he ever spoke or corresponded with Bennett or Rego concerning this project. In addition, with respect to testimony given during the second Beloff trial at page 523, he testified that Bennett was "entirely incorrect" concerning his having had contact with Beloff or Rego concerning 925 Pine Street.

Scannapieco did tell Lesser Bennett's story of the extortion demand after he found out about the checks which had been written to the carpet company in New Jersey. Scannapieco is not sure how quickly he advised Lesser of this, but he indicated that he felt no urgency because of his belief that it was merely a fund diversion. The contact with Lesser may have been within four to eight weeks after the checks were written.

Scannapieco never believed that the money was actually paid for a bribe and, despite Bennett's testimony and the conviction of Beloff and Rego, he is still of the opinion that Bennett was merely diverting money from the corporation.

The witness explained that he felt that the alleged bribe demand made no sense. The coincidence of the fact that payment was supposed to be made to a carpet company, when Bennett's father had such a company, the fact that Rego had not come to him as president of the company demanding the bribe, the fact that there had been other approvals received without bribe demands and the fact that he and Bennett were in the process of separating their accounts, all seemed suspicious to him. He did not recall having told Rego or Beloff about the separation. He considered the information given to him by Bennett, but decided that it was just another scheme to divert money.

When questioned concerning his reasons for not going to the authorities or taking some other action concerning the apparent diversion of funds, he again stressed his economic vulnerability at the time and his belief that he had to get economically stable in order to take any action. His priority was to separate from Bennett without getting involved in any protracted litigation which would tie up his assets and catch him in a day-to-day relationship with Bennett, a situation which he described as totally unattenable. He made a "practical business decision to get out as soon as he could reasonably do so." Mr. Scannapieco himself would not break the law and it would be "a pleasure to report law breakers."

The witness was questioned concerning his conversations with Division Investigator Barbara Friese. He could not clearly recall whether he had discussed with her his meeting with Beloff and Rego and Bennett's having come to him and reported Rego's bribe demand.

The witness met Rego twice, once after the neighborhood meeting concerning the wall and the other time in Beloff's office when he had gone there to advise the councilman that the wall had been put back on the property and to ask that HD's name not be removed from consideration for the Charles Building project. Rego's comments at the time of the meeting concerning the wall had "shocked him." He expected a "more professional approach." He listened to Rego and did not say whether he would or would not replace the wall, but said that he would consider it. He probably told Bennett of this

conversation. He believed that Rego's statements of a threatening nature were uncalled for, both in tenor and personality. However, he did not think that Rego had the capacity to carry out his threats. Scannapieco described himself at the time as "apolitical and perhaps naive" and he did not see Rego's comments as all that significant. However, he did believe that Reg and/or Beloff might have some influence on the unions for the Redevelopment Authority and could have made life more "difficult" in Center City.

At the meeting which he attended in Beloff's office with the Councilman and Rego, Mr. Scannapieco did not tell Beloff about Rego's threats following the community meeting. He did not do so because he believed that any threat by Rego was a threat by Beloff. At the time of the meeting, to which Scannapieco had gone prepared to advise that the wall had been put back up, Beloff seemed "overly friendly" and "seemed to push aside technical things." There was nothing about this meeting which gave a signal to Scannapieco that any further demands, extortionate or otherwise, would be coming from the councilman or his assistant.

On October 12, 1984, Michael R. Arno, Executive Director of the Redevelopment Authority, wrote to Rita M. Cannavo, an attorney for HD, concerning the problem which had been raised by Councilman Beloff who had "refused to introduce this Resolution (for 925 Pine Street) until a satisfactory solution is reached concerning the property at 328 Spruce Street." He indicated that an attempt was being made to arrange a meeting for October 24, 1984, at the Redevelopment Authority Board Room to try to work out the problem concerning the 925 Pine Street project. He does believe that the meeting occurred, but he does not recall attending and cannot recall who did appear for the company.

Bruce R. Lesser, an attorney licensed in Pennsylvania and a partner in the law firm of Lesser & Kaplan of BlueBell, Pennsylvania, testified that he represented a purchaser of one of Scannapieco's rehabilitated buildings in 1982-82. At that time, his understanding was that Bennett was not fully active in the business. In June of 1982, Lesser became counsel for HD and sometime thereafter Bennett became a full-time partner. There were no written contracts between the men to the best of Lesser's knowledge.

Lesser agreed with Scannapieco's descriptions of the different attitudes and views of the two partners. He described Bennett's attitude as "just get it done."

In early 1984, Scannapieco indicated to Lesser his disenchantment with the partnership and his belief that he had to terminate and that he wanted out immediately. In Pennsylvania there is no shareholders agreement providing for a put and call. It would therefore be necessary for a receiver to be appointed if the partnership broke up without some kind of agreement. This would destroy the existing business, which was totally dependent upon the reputation of the owners. Litigation would destroy confidence in the business. In early Spring, when the discussions were held, it would have been the worst time for a real estate project to become engaged in these kinds of difficulties because of the financial arrangements which existed. It was necessary to finish the projects, run out the year's projects, thus releasing personal property from pledges of collateral for loans and also providing some profit to the partners which could be used as needed in any litigation.

Mr. Lesser describes Scannapieco's reputation as of the highest quality. Lesser is very active in the real estate community and has learned of Scannapieco's reputation from customers, contractors and other leaders in the real estate business.

According to Lesser, he did direct the comptroller of HD to take a look for any checks which seemed unusual and it was during this process that the checks to the carpet company were discovered. The purpose of this review was to attempt to look for any monies which had been diverted or taken out in order to reduce monies that would be needed for a buy out. Lesser described he and Scannapieco as "a little naive" in connection with this review.

When they learned of the $25,000 drawn for carpets, Scannapieco and he discussed the matter and Tom indicated that he wanted this money taken out, that is, he wanted credit for it in the financial dissolution of the company. Sometime before June of 1985, Scannapieco told Lesser the story concerning Bennett's alleged solicitation by Rego.

According to the witness, when he learned of the diversion of the monies, he concluded that no criminal actions were available. There were no actual written agreements between the corporate owners. Any attempt to obtain a civil remedy by

threatening criminal action would constitute extortion under Pennsylvania Law. Lesser believed that the best situation was to find out the financial details of any diversions and then attempt to work them into the arrangements for the dissolution.

Barbara Friese, an employee of the Division of Gaming Enforcement for eight and one-half years in the service industry licensing area who has headed the real estate and construction section for two and one-half years and who was involved in investigating this application, interviewed Mr. Scannapieco in March 1986 and on several occasions thereafter. She was also present when Deputy Attorney General McDonough interviewed the applicant. She testified that in their conversations, Scannapieco did not speak of a bribe attempt. He brought up the incident concerning the wall and his subsequent meeting with Rego and Beloff in Beloff's chambers which he described as a very formal meeting in which he advised that the wall had been reconstructed, mentioned other projects, but not the Charles project specifically.

In addition to the testimony presented and the documents, which by and large are the various agreements between the owners involved in the separation of the duties and ultimately of the business, the transcripts of the testimony of Dr. John A. Bennett in the United States District Court for the Eastern District of Pennsylvania on March 25, 1985 and June 26, 1987, in the two trials of the criminal charges against Leland Beloff and Robert Rego were presented in evidence. These have been read fully by the Administrative Law Judge. In them, Bennett describes the circumstances which surrounded the alleged bribe solicitation made by Rego at the Vesper Club in Philadelphia, which ultimately resulted in the payment by HD through Bennett of two checks, one for $5,000 and one for $20,000, drawn to a Haddonfield, New Jersey, carpet company, but actually payments made at the demand of Rego. Scannapieco's name came up in the testimony in a very limited fashion. On cross-examination by counsel for the defendants, Bennett was asked whether he had discussed the $25,000 demand with his partner. He indicated that he did and also that Scannapieco authorized payment. In addition, Bennett said that when they first discussed the matter, "we decided to play his bluff and not make any payments" (March 25, 1987 at page 122). Of course, according to the testimony and the evidence presented, the checks were ultimately drawn, first on the HD accounts and then, according to Bennett's testimony at page 588 and 89 of the June 26, 1987 transcript, the checks were then reclassified to his own account. There is no other real discussion of Scannapieco's role or activities in connection with these matters in the transcripts.

Following the hearing, affidavits were submitted by five individuals on behalf of Scannapieco, each attesting to his reputation for good character, honesty and integrity. These documents were provided by Alfred Cade, Retired United States Army General and now Senior Vice President of Ceasar's Hotel and Casino, Dr. Peter Constantini, a physician in South Jersey, John Marcow, a personal friend of Scannapieco for "almost my entirely life," Michael Spada, Comptroller for Historical Developers of Pennsylvania, Inc., since 1986, and Rodney A. Werner, a licensed architect in the Philadelphia area who is also associated with Scannapieco in connection with certain civic activities of the Spring Garden Civic Association.

DISCUSSION

The evidence presented by the petitioner in this case concerning the matters raised in the Division's letter, specifically those involving the bribe purportedly paid to Councilman Beloff, consists of Scannapieco's absolute denial that he authorized the payment of the bribes, believed that bribes had been paid, or would have paid bribes had he actually felt that Beloff and Rego were trying to extort monies from the company. Scannapieco's position throughout was that he doubted that any bribe requests had been made and that he felt that Bennett was merely stealing monies from him by diverting them from HD. In fact, Beloff and Rego were convicted of extortion and Bennett testified under a grant of immunity in the federal trials. Based upon the evidence presented, I **FIND** that Bennett did receive a bribe demand from Rego on behalf of he and Beloff and that the monies were paid through the subterfuge of payments to the carpet company in Haddonfield.

In response to Mr. Scannapieco's strong denial that he authorized the payment of bribes or knew that bribes were actually being paid or believed that they had actually been demanded, the Division has presented the testimony of its investigator who indicates some question as to whether Scannapieco mentioned the purported bribe request and the testimony of Bennett in the form of the transcript of Bennett's testimony at the criminal trials. Bennett did not testify in these proceedings, apparently was unwilling to do so, and quite probably was not subject to subpoena as I believe he does not reside in New Jersey. Be that as it may, all we have of direct evidence concerning the purported involvement of Scannapieco in authorizing the payment of the bribes is the transcribed testimony of Bennett. This testimony is hearsay in connection with this matter. While the transcripts

are admissible under the terms of the Casino Control Act, N.J.S.A. 5:12-106, the significant question is whether, despite the fact that reasonable men might review them in connection with this serious matter, whether reasonable men would put any reliance on this testimony in the form of which it is presented.

Although he received immunity, Dr. Bennett is hardly a stellar individual. The testimony concerning him by Scannapieco, as affirmed by Lesser, indicates that this gentleman was interested in "getting the job done," apparently without worrying too much about the ethics of the matter. By his own admission, he paid bribes on several occasions. While it is not impossible by any means that he could be telling the truth when he asserts Scannapieco knew of and approved the payment of bribes, the difficulty with accepting his transcribed testimony as significant and trustworthy evidence is apparent. He was not subject to cross-examination by counsel for Scannapieco, he was not subject to examination by this judge, he was not subject to the normal scrutiny which one called upon to make determinations of credibility is afforded by live presentation of testimony. In short, as where the credibility of a witness's testimony is absolutely and essentially crucial, as here in connection with Bennett's proferred accusations concerning Scannapieco, reliance upon transcripts of testimony provided in another proceeding in which this applicant was not involved is of extremely limited value and merit. I **FIND** that Dr. Bennett's testimony, while admissible, cannot be afforded any significant weight whatsoever in the circumstances of its presentation.

I considered the testimony of Mr. Scannapieco carefully. While he can be faulted for not having taken some more direct steps to attempt to prevent his business partner from ripping him off, while he might also be criticized for not having contacted law enforcement authorities to report what his partner was telling him concerning a purported bribe offer even if he did not believe his partner, on the whole, I found that Scannapieco gave every appearance of credibility in his denials of actual knowledge and belief concerning the bribes and I **FIND** that he did not authorize the payment of bribes and did not believe that Bennett had actually been solicited for a bribe. Whether he was naive in this lack of belief is another matter. It is not at all inconceivable that as a developer in a major city, particularly one with an unfortunate reputation for councilmanic mischief, that Scannapieco should have been alerted to the possibility that Bennett was telling him the truth that an unscrupulous city councilman and his administrative assistant were seeking to extort monies. However, despite these limitations, under all of the

circumstances I believe that Scannapieco's distrust in Bennett was understandable, his lack of belief was explainable, and his failure to take any action with respect to contacting law enforcement authorities was at least somewhat defensible under the circumstances. As such, I can find no basis for concluding that Mr. Scannapieco engaged in any activities in connection with these matters which would substantially and signficantly limit a finding that he has the requisite good character, honesty and integrity for licensure. In addition, the evidence presented, including the character references and the testimony of Mr. Lesser, as well as the evidence concerning the high regard that Scannapieco is held in with respect to his operations at HD of Pennsylvania, Inc., indicate that by and large Mr. Scannapieco is an honest, upright, law abiding and highly reputable citizen. I believe that he found himself involved in an unfortunate and difficult business situation which colored his view of his partner considerably and perhaps caused him to have a certain degree of tunnel vision and blindness with respect to the possibility that the company was being subjected to illegal demands by politicians.

Based upon the above, and for the reasons expressed in the conclusions set forth earlier in this decision, I **CONCLUDE** that the applicant is qualified for licensure as a casino service industry.

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

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

December 27, 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

12-28-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EXHIBT LIST

On behalf of petitioner:

P-1 Affidavit of Alfred Cade

P-2 Affidavit of Peter Constanti, M.D.

P-3 Affidavit of John Markow

P-4 Affidavit of Michael Spada

P-5 Affidavit of Rodney A. Werner

P-A Separate projects responsilities list

P-B Job meeting minutes

P-C Resolution No. 358, City Council of Philadelphia

P-D Closing Index, with attached agreements and documents relating to separation of the business

P-E Assignment Agreement

P-F Memorandum of Understanding

On behalf of respondent:

R-1 Transcript of testimony of March 25, 1987, in United States of America v. Leland Beloff and Robert Rego, Criminal No. 86-00453-1, 2, testimony of John A. Bennett

R-2 Transcript of testimony of June 26, 1987, in United State of America v. Leland Beloff and Robert Rego, Criminal No. 86-00453-1, 2, testimony of John A. Bennett

R-3 Letter of October 12, 1984, from Michael R. Arno, Executive Director, Redevelopment Authority of the City of Philadelphia

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-22
REGISTRATION NO. 73683-40
OAL DOCKET NO. CCC 6089-88
ORDER NO. 89-22-15

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

Complainant,

v.

MICHELLE Y. HOGANS,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 14th day of June 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6089-88
AGENCY DKT. NO. 89-22

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
MICHELLE Y. HOGANS,
Respondent.

Norma Stancil, Deputy Attorney General for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Michelle Y. Hogans, respondent, pro se

Record Closed: February 28, 1989 Decided: April 12, 1989

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

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on July 14, 1988 seeking revocation of the respondent's casino hotel employee registration. The respondent requested a hearing on August 2, 1988. On August 15, 1988, the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case. A prehearing conference was conducted on October 11, 1988. A plenary hearing convened on February 28, 1989.

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STATEMENT OF THE CASE

The Division alleges that the respondent is disqualified from casino hotel employee registration because she was convicted on December 8, 1986 of selling cocaine. The Casino Control Act (Act) lists such a crime as a disqualification from casino employee registration. N.J.S.A. 5:12-86c and 91b. The Division further alleges that the respondent failed to disclose her conviction on her application for casino hotel employee registration. The Act lists such a failure to disclose as an additional disqualification from casino hotel employee registration. N.J.S.A. 5:12-86b and 91b. The respondent alleges that she is rehabilitated. The Act permits rehabilitated offenders to avoid disqualification from casino hotel employee registration. N.J.S.A. 5:12-91d.

SUMMARY OF STATE'S EVIDENCE

The Division introduced into evidence a certified copy of respondent's conviction of December 8, 1986 (P-4). On that date, the respondent pled guilty in New Jersey Superior Court to an indictment charging her with distribution of a controlled dangerous substance contrary to N.J.S.A. 24:21-19a(1). That statute has been recodified as N.J.S.A. 2C:35-5. The supporting documents and the testimony of the respondent establish that the controlled dangerous substance was "crack," a form of cocaine.

The Division also introduced as exhibit P-5 the respondent's application form for casino hotel employee registration, which is called a Personal History Disclosure Form 4A (PHDF). It reveals that respondent answered "No" to the question "Have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?"

The PHDF is signed and dated on April 1, 1987, subsequent to respondent's arrest and conviction.

The respondent admitted to a Division investigator that she purposefully concealed her arrest and conviction on the PHDF because she "needed a job pretty

bad." At the hearing she admitted that she also concealed her arrest and conviction on her application of employment to Trump Castle, a licensed casino.

LAW

The Act, N.J.S.A. 5:12-1 et seq., at section 86c(1), lists certain crimes for the conviction of which an applicant will be disqualified for casino licensure. This section is made applicable to applicants for registration by section 91b. The crime of distribution of a controlled dangerous substance contrary to N.J.S.A. 2C:35-5 is a listed disqualifier. Formerly N.J.S.A. 24:21-19a(1) was a listed disqualifier. It is the predecessor statute to N.J.S.A. 2C:35-5.

The Act also provides for disqualification for failure to provide material information or for supplying untrue or misleading material facts pertaining to qualification criteria at section 86b.

Despite the existence of disqualification criteria as described in subsection c of section 86 (offenses), an applicant for registration may still be registered provided she can affirmatively establish her rehabilitation. N.J.S.A. 5:12-91d. This exception, however, is inapplicable to disqualification criteria listed under subsection b of section 86 (failure to provide information).

FINDINGS OF FACT

I **FIND** that respondent was convicted of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, to wit: cocaine. This is the equivalent to N.J.S.A. 2C:35-5, a statutory disqualifier as defined in the Act at section 86c.

I **FIND** that the respondent failed to reveal a fact material to qualification as required by N.J.S.A. 5:12-86b and 91b, to wit: a conviction for distribution of a controlled dangerous substance.

CONCLUSIONS OF LAW

I **CONCLUDE** that the respondent is disqualified for casino hotel employee registration on the basis of a conviction for a disqualifying offense pursuant to N.J.S.A. 5:12-86c and 91b.

I further **CONCLUDE** that the respondent is disqualified from casino hotel employee registration on the basis of a failure to provide facts material to qualification for registration pursuant to N.J.S.A. 5:12-86b and 91b.

REHABILITATION

If the respondent was rehabilitated, she would not be eligible for registration. Rehabilitation is applicable only where the sole ground of disqualification was for an enumerated offense. Here the respondent is disqualified on two grounds, conviction for an offense and failure to provide material information to the Commission. Nevertheless, the applicant failed to satisfactorily address the issue of rehabilitation at the hearing. She was unable to obtain for example, in the four months which elapsed between the prehearing conference and the plenary hearing, a single letter of recommendation. She testified that she did not have time to obtain such a letter, even though she was unemployed during the entire time. In the two years since she was released from jail she has had no regular employment; nor has she acquired any academic or vocational schooling in that time. Her only adult employment was at Trump's Castle from which she was terminated for absenteeism.

ORDER

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

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

recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

April 13, 1989
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

4/17/89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 17 1989
DATE

Jaquee LaVerde
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

John Lugo
Michelle Hogans

For the Respondent:

Michelle Hogans

EXHIBIT LIST

For the Petitioner:

P-1 Atlantic City Police Department Investigation Report
P-2 Atlantic City Police Department Arrest Report
P-3 Indictment No. 86091810-D
P-4 Atlantic County Judgment of Conviction for Indictment 86091810-D
P-5 Michelle Hogans' Personal History Disclosure Form
P-6 Trump Castle Employee Application
P-7 Trump Castle Disciplinary Action Notice
P-8 Trump Castle Disciplinary Action Notice
P-9 Trump Castle Disciplinary Action Notice

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-230
OAL DOCKET NO. CCC 8524-87
REGISTRATION NO. 26536-40
ORDER NO. 89-4-4

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. LOYAL HYATT, Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 25, 1989;

IT IS on this 24th day of May 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Loyal Hyatt is revoked substantially for the reasons stated in the initial decision, which is incorporated herein; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8524-87
AGENCY DKT. NO. 85-230

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
LOYAL HYATT,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Peter L. Bruso, Esq., for respondent (Jacobs, Todd & Bruso, attorneys)

Record Closed: October 24, 1988 Decided: December 8, 1988

BEFORE RICHARD J. MURPHY, ALJ:

This is a violation proceeding brought by the Division of Gaming Enforcement (Division) under the Casino Control Act (N.J.S.A. 5:12-1 et seq.) against Loyal Hyatt, who holds a casino hotel employee registration. Hyatt was charged with drug-related offenses. The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on June 4, 1985, and the Commission suspended Hyatt's registration on June 21, 1985. That suspension order was revoked on December 17, 1987, after the charges were conditionally discharged, and the matter was referred to the Office of Administrative Law for hearing as a contested case on December 21, 1987. The hearing was conducted on May 17, 1988.[1] The matter was heard to completion on May 17, but the record was left open

[1] The matter was originally scheduled for hearing on February 25, 1988, but adjourned due to illness. Subsequent dates for April 19 and April 28 were adjourned because counsel were unavailable and discovery incomplete.

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until June 6 for submission of additional documentation and an opportunity for reply to it. After reviewing additional documentation submitted and providing an opportunity for response to it, I ordered on July 20 that the Division produce Peter Aiutto, a confidential informant in this matter. The Division made an extended effort to locate Mr. Aiutto, but on September 22, advised that he could not be found. The Division also offered additional documentary evidence on that date. The respondent replied to that evidence and made a further argument on October 13 and the record was closed on October 24 after the Division was given an opportunity to respond.

The issues presented are (1) statutory disqualification under N.J.S.A. 5:12-86g; (2) inimicality, N.J.S.A. 5:12-86c(2); (3) rehabilitation, N.J.S.A. 5:12-91d; and (4) waiver, N.J.S.A. 5:12-91(e). For the reasons set forth, this opinion recommends that respondent's registration be revoked.

FACTS

The material facts are not in dispute. Loyal Hyatt holds casino employee registration no. 26536-40 and was formerly employed by the Tropicana Hotel/Casino as a banquet manager until terminated on May 16, 1985, following his arrest at the Tropicana for possession of a controlled dangerous substance (cocaine). The Atlantic County Grand Jury handed up an indictment against Hyatt on January 15, 1986, charging him with possession of a controlled dangerous substance (cocaine) contrary to N.J.S.A. 24:21-20a(1) and possession of controlled dangerous substances (again cocaine) with intent to distribute in violation of N.J.S.A. 24:21-19a(1). Hyatt plead guilty to the possession count in October 1986, and the charge was conditionally discharged on September 8, 1987, after a year of probation during which his conduct was satisfactory and all drug tests were negative.

The two counts of the indictment arose out of one incident on May 16, 1985, in the banquet manager's office at the Tropicana Hotel/Casino. Division Agent John Lugo testified that he was called to the Tropicana on that date and there met Detective Sergeant William Smith, who detailed him to search the banquet manager's office. Detective Smith, who did not testify, arrested Hyatt and interviewed him. Lugo was not present during the interview, although he did hear Hyatt acknowledging his Miranda rights. While Smith interviewed Hyatt, Lugo searched the office and found a valise under the desk, which contained a small

beige plastic container with a white powder residue, which later proved to be a trace amount of cocaine. The valise, plastic container belonged to Loyal Hyatt.

According to a New Jersey State Police Report prepared by Detective Sergeant William Smith and admitted into evidence (P-1), a confidential source at the casino, later identified as one Peter Aiutto, allegedly reported that he had observed Loyal Hyatt at his desk in the Tropicana with several glassine envelopes in his hands containing a white powder suspected to be cocaine. (P-1). As indicated, the Division is unable to locate Peter Aiutto. Detective Sgt. Smith's police report notes that members of the Tropicana Investigations Unit, Lt. Roger Brown and Investigator Sheldon Zuker, advised Smith of the following:

> . . .They responded to Loyal Hyatt's office via instructions of Mr. Babbick. Upon entering they informed Hyatt of the above allegation and informed him that they would conduct a search of his office. While conducting search, Inv. Zuker found a brown leather pouch (4 inches x 3 inches) in the upper left hand desk drawer. He opened the pouch zipper and pulled out several glassine envelopes which contained a white powder and a note which upon examination, was written to Hyatt and contained statements in reference to when Hyatt should pay for the substance within the pouch and the amount of money for the transaction. According to Inv. Zuker, Hyatt denied seeing the brown pouch before or the substance within. This writer immediately took possession of the brown pouch which contained the suspected narcotics. Upon examination of the pouch it revealed 13 glassine bags containing white powder, suspected CDS (cocaine). The same submitted to FBI lab for examination . . . A further search of the accused office was conducted by DGE personnel, Agt. Lugo and Det. Higgens, which revealed other narcotic paraphernalia and a small amount of CDS marijuana (U/ 25 gms). . . Upon questioning the accused, he stated that he was 'set up' and denied having any knowledge of the found narcotics contained within his desk. (P-1).

The note referred to above, which was found in the brown pouch in the office used by the banquest manager and others at Tropicana, states:

> Loyal,
> There are
> 3 (grams)
> 10 (one half) grams = $800
> P.S. Don't give anyone any breaks I'd rather (over) give it to you. If any problems give me a call over Hugh's or my house. I'll take care of you again after this batch. I'll need the money you owe me on Monday. Let me know if your stuck ($218).

The author of the note is not identified on its face and the state has offered no evidence to supply such identification. Hyatt denies any knowledge of the note. A gaming enforcement agent, John Lugo, who was present at the search, testified that he found a valise under a desk being used by Hyatt and further found inside the valise a small beige container with a white powder residue. Lugo also found marijuana cigarette butts on the floor next to the heating ducts in the office. The amount of cocaine found was described as a trace amount. A Request for Examination of Evidence specified laboratory findings as to items which were found in the desk at the Tropicana banquet manager's office on the fourth floor:

1. (1) brown leather pouch containing 13 glassine bags containing white powder (cocaine).

2. (1) round plastic container, brown, with white powder residue around the edge.

3. (1) green glass vial w/ attached spoon, containing white powdery residue.

4. (3) brown paper envelopes containing residue of MJ (marijuana) cigarettes. (P-2).

The laboratory report performed on these items found that Item (1) contained 6.6 grams of cocaine, Item (3) contained a trace amount of the drug and Item (4) contained .67 grams. Item (2) also contained a trace amount of cocaine. (P-2).

The indictment handed up by the Atlantic County Grand Jury charged Hyatt with possession of cocaine and possession with intent to distribute. (P-3). The complaint filed by the Division states that respondent was also charged with possession of marijuana under 25 grams, but this charge was not made by the Atlantic County Grand Jury. (P-3). The charges against Hyatt were later conditionally discharged after he plead guilty to the possession count.

Respondent, who is now 46 years old and had worked in Atlantic City for 17 years, admitted that the brown vial found in the banquet manager's office containing a trace amount of cocaine belonged to him, but denied ownership or any knowledge of the 13 glassine bags of cocaine found in a brown leather pouch, as well as the butts of marijuana cigarettes found around the office. He claims that he was "set up" by other employees who wished to take over his banquet manager position. Hyatt acknowledges that he had used cocaine on a casual basis over a very short period of time but was hospitalized in 1984 after having a cardiac reaction to

the drug. (R-10). He claims that he never used it again. Concerning his arrest on May 16, 1985, Hyatt states that he never used or knowingly possessed drugs at work, and didn't realize that the vial containing trace amounts of cocaine was in his valise. He denies knowing of the unsigned note addressed to him and denies owning the brown leather pouch containing the glassine bags of cocaine. He stated that the banquet manager's office was in fact a storeroom containing a desk that was being used by him, and other employees, in connection with banquet matters. As banquet showroom manager, Hyatt was responsible for setting up for banquets, as well as working with shows, convention services, servers and performing various functions incidental to banquets. Other employees designated as banquet captains reported to him and the office was used by the captains to perform their duties. The door to the office had a lock, and several of the other banquet captains had keys. As indicated, Hyatt speculates that he was "set up" by another employee and suspects that the drugs and note may have been planted by Peter Aiutto, who was named banquet manager after the respondent's arrest and termination.

Respondent has no arrest record prior to or after the May 1985 incidents. He presented various letters or references from employees at the Tropicana as to his exceptional job performance. His overall job rating as of March of 1984 was stated as superior. (R-1). The catering manager at Tropicana describes him as "highly qualified and very knowledgeable in all aspects of banquet service. He is a dedicated employee, very efficient, personable and dependable". (R-1). Hyatt also presented character references from a variety of friends and business associates attesting to his honesty and dependability. (R-1 through R-8).

There is no dispute that Loyal Hyatt was in possession of a trace amount of cocaine at the banquet manager's office of the Tropicana Hotel and Casino on May 16, 1985. He plead guilty to the possession count, which was conditionally discharged. (P-3). He denies ownership or any knowledge of 13 glassine containers of cocaine and an incriminating note found in a brown pouch in the desk used by him as banquet manager, as well as by other employees. The note addressed to "Loyal" has been admitted into evidence, as has Detective Sgt. Smith's report in which he states that he was told by Tropicana investigators that they were told by Peter Aiuttio that he had seen Loyal Hyatt in possession of the glassine envelopes of cocaine. The Division was unable to produce Peter Aiutto and has offered no evidence as to the identity of the author of the note. Given the fact that the note was addressed to Hyatt and found in a desk that he used as banquet manager, I concluded that the note was sufficiently authentic to be allowed into evidence. N.J.A.C. 1:1-15.6. The

police report was allowed in because hearsay is admissible in OAL proceedings (N.J.A.C. 1:1-15.5, and need not be supported by residuum of competent evidence. See, Div. of Gaming Enforcement v. Merlino, 216 N.J. Super. 574 (App. Div. 1987), aff'd 109 N.J. 134 (1987). I **FIND**, however, that the Division has failed to prove by a preponderance of the believable evidence that Loyal Hyatt was in possession of the glassine envelopes of cocaine. He vehemently denies this and did so when questioned by officers at the scene. He later plead guilty to possession based on the trace amount of cocaine in the vial, but declined to plead guilty as to the count of possession with intent to distribute arising from the glassine envelopes of cocaine. Further, the note is unsigned and the Division has offered no evidence of its source and has not proven that the respondent owned or even knew of the brown pouch in which the note and cocaine was found. Hyatt was arrested following a tip from Peter Aiuttio, who was not produced at the hearing and was thus not available for cross-examination. On the day of his arrest, the respondent was called in to the Tropicana unexpectedly and confronted with the cocaine found in the desk. I note that Hyatt did not have sole access to the office or the desk, and that it was used by other employees who had keys, including Peter Aiuttio. Considering all of the circumstances and gaps in the evidence, I am unable to find that the Division has proved that Hyatt was in possession of the glassine bags of cocaine.

ISSUES

The issues to be resolved are:

(1) Whether the respondent Loyal Hyatt is statutorily disqualified from registration under N.J.S.A. 5:12-86g notwithstanding the fact that the drug charge was conditionally discharged and not fully prosecuted;

(2) Whether respondent committed offenses indicating that his registration would be inimical to the policy of the Casino Control Act and to casino operations under N.J.S.A. 5:12-86(c)(2);

(3) Whether respondent can affirmatively demonstrate rehabilitation under N.J.S.A. 5:12-91d;

(4) Whether respondent is entitled to a waiver of disqualification in the interest of justice under N.J.S.A. 5:12-91(e).

DISCUSSION AND CONCLUSIONS

(1) DISQUALIFICATION UNDER 86g.

N.J.S.A. 5:12-86 g provides that an applicant may be disqualified on the basis of:

> The commission by the applicant or any person who is required to be qualified under this act of 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 penal laws of this state . . . .

The offenses enumerated under N.J.S.A. 5:12-86(c)(1) include manufacturing, distributing or dispensing a controlled dangerous substance in violation of N.J.S.A. 2C:35-5. The possession offense to which respondent plead guilty and which was subsequently discharged is not among the offenses that are referred to. See, N.J.S.A. 24:21-20a(1), (4). I **CONCLUDE** on that basis that the respondent is not a subject to disqualification on the basis of N.J.S.A. 5:12-86g concerning offenses set forth in Section 86(c)(1).

(2) INIMICALITY (REHABILITATION)

N.J.S.A. 5:12-86(c)(2) provides for disqualification on the basis of any other offense beyond those specified in 86(c)(1) which indicate that licensure would be inimical to the policy of the Act and to casino operations. Registrant may be disqualified even when such conduct has been conditionally discharged and thus is not fully prosecuted. In assessing inimicality, the concept of rehabilitation is a relevant and necessary part of the determination. See, DGE v. Davis, 8 N.J.A.R. 301, 314 (1985). The facts to be considered by the Commission in reviewing rehabilitation as part of the inimicality determination are set forth in N.J.S.A. 5:12-91h and include:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

The nature of the duties of the respondent's former position as banquet manager, involve considerable responsibility for the management of employees and conduct of functions that play an important role in casino operations. (Factor 1).The offense of possession of a controlled dangerous substance on casino premises is a highly serious one, even if the amount in question is minimal. There is evidence that respondent had previously engaged in cocaine use away from casino premises, although his use of the drug was casual and was terminated after an adverse reaction. (Factors 2-6). Hyatt cites no social conditions contributing to his conduct. (Factor 7). As to evidence of rehabilitation, he refers to his conditional discharge and completion of all successful terms thereof, including drug testing and submits evidence of his outstanding performance as a banquet manager prior to is arrest. (Factor 8).

Hyatt argues that he is, at most, guilty of casual cocaine use over a short period of time, not involving use of the drug on the job, and inadvertantly possessed a trace amount of drug on the job. He claims that he discontinued even casual use of cocaine after having a near heart attack reaction to it. He continues to claim that he was "set up" by other employees who were after his job and cites his exceptional performance on the job as evidence that his presence in the casino industry is not inimical within the meaning of N.J.S.A. 5:12-86(c)(2).

Given the seriousness of respondent's conduct in having cocaine in his possession on casino premises, I **CONCLUDE** that respondent's registration would be

inimical to the policies of the Act and to casino operation under N.J.S.A. 5:12-86 and that he is therefore disqualified.

This is an unfortunate case in the sense that respondent has amply demonstrated that he was an exceptional employee whose services as banquet manager were much praised and highly valued. But notwithstanding the outstanding nature of respondent's work record, I **CONCLUDE** that he must be disqualified on grounds of inimicality.

(3) WAIVER

The Commission may waive any disqualification consistent with the public policy of the Act and upon a finding that the interests of justice so require. See, N.J.S.A. 5:12-91(e). Any such finding must be supported by substantial evidence and specific findings. State v. Hannah, 22 N.J. Super. 98 (App. Div. 1976). Given the nature of the offense committed by respondent and the absence of any mitigating factors, I am unable to recommend that the interests of justice require a waiver in this instance.

ORDER

On the basis of the above Findings of Fact and Conclusions of Law, it is **ORDERED** that the Casino Hotel Employee Registration is **REVOKED.**

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

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

Dec. 8, 1988
DATE

RICHARD J. MURPHY, ALJ

Agency Receipt:

12-9-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 13 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

lh

WITNESSES

FOR THE PETITIONER:

John Lugo, agent for the Division of Gaming Enforcement

FOR THE RESPONDENT:

Loyal Hyatt

EXHIBITS

FOR THE PETITIONER:

P-1	New Jersey State Police Report by Det. Sgt. William Smith
P-2	Request for Examination of Evidence and Lab Report from the State Police
P-3	Atlantic County Indictment 86-01-0066-C-CP
P-4	Note to Loyal Hyatt

FOR THE RESPONDENT:

P-1	Letter of Commendation from Tropicana
R-2	Letter from Frances Wismiewski, N.J.S.
R-3	Letter from Nicholas Paradiso
R-4	Letter from Joanne Wismiewski
R-5	Letter from Dorothy J. Barile
R-6	Letter from June Yohe
R-7	Letter from Marie Yohe

R-8 Letter from Dennis Snyder

R-9 Diagram of Banquet Manger's office prepared by Agent Lugo

R-10 Medical Records from David B. Kessler, Memorial Hospital as to respondent's admission

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1989

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54	72. Application of Henry Jackson, Jr. for a casino employee license and State of New Jersey v. Henry Jackson, Jr.	OAL CCC 2593-88; CCC 1485-88 Agency 88-EA-56; 88-317	01/17/89	989
55	73. State of New Jersey v. Sylvia Jackson	OAL CCC 8131-88 Agency 89-24	06/20/89	999
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62	84. Application for renewal of the casino employee license of John R. Marcucci	OAL CCC 4662-88 Agency 88-EA-270	01/13/89	1111
63	85. State of New Jersey v. Marina Associates	OAL CCC 177-89 CCC 8476-87 (on remand) Agency 88-108	04/18/89	1126
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64	87. State of New Jersey v. Aretavia Martin	OAL CCC 6617-88 Agency 87-351	03/17/89	1142
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69	95. Application of Peggy M. McGill for a casino employee license	OAL CCC 6620-88 Agency 88-EA-123	06/30/89	1197
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86	124. Application of Joseph D. Taliaferro for a casino employee license	OAL CCC 4661-88 Agency 88-EA-258	02/24/89	1402
87	125. Application of John N. Taylor, III for a casino employee license	OAL CCC 5874-88 Agency 88-EA-257	03/30/89	1409
	126. State of New Jersey v. James Thorsby (See, State v. Trump's Castle Associates)			1453
88	127. State of New Jersey v. Tom's Travel, Inc., Thomas R. Callicotte and Adamar of New Jersey, Inc. t/a Tropicana Hotel and Casino	OAL CCC 3768-88 Agency 88-322	05/01/89	1418
89	128. State of New Jersey v. Judy Ann Torres	OAL CCC 8133-88 CCC 8220-87 (on remand) Agency 86-18	06/01/89	1428

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102 142.	Application of Clifford C.F. Wong, Inc. for a casino service industry license and Application of Clifford Wong for a casino employee license	OAL CCC 5188-88 CCC 6310-87 (on remand) Agency 87-CSI-9; 88-EA-9	03/08/89	1673
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 115902
Docket No. 89-170

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	OPINION
v.	:	
INDUSTRIAL EQUITY (PACIFIC) LIMITED, AUCKLAND PENSION FUNDS LIMITED, DEL WEBB CORPORATION, THE CLARIDGE HOTEL AND CASINO CORPORATION, THE CLARIDGE AT PARK PLACE, INCORPORATED AND DEL E. WEBB NEW JERSEY, INC.,	:	
Respondents.	:	

By New Jersey Casino Control Commission:

Walter N. Read, Chair
Valerie H. Armstrong, Vice-Chair
W. David Waters, Commissioner
E. Kenneth Burdge, Commissioner
Frank J. Dodd, Commissioner
(Supplemental Opinion Only)

APPEARANCES

For Industrial Equity (Pacific) Limited and Auckland Pension Funds Limited:

Mark D. Schorr, Esq.
Hannoch Weisman

For The Claridge at Park Place, Incorporated, The Claridge Hotel and Casino Corporation, Del Webb Corporation, and Del E. Webb New Jersey, Inc.:

Brian D. Spector, Esq.
Ribis, Graham, Verdon & Curtin

For Division of Gaming Enforcement:

James C. Fogarty, Deputy Attorney General

I. INTRODUCTION

In a Schedule 13D filing dated July 21, 1987, Industrial Equity (Pacific) Limited (IEP) and its wholly-owned subsidiary, Auckland Pension Funds Limited (APF), indicated that they had purchased 9.3% of the common stock of Del Webb Corporation (Webb), a publicly traded holding company of casino licensees, The Claridge at Park Place, Incorporated (CPP) and Del E. Webb New Jersey, Inc. (DEWNJ). Because IEP and APF held more than five percent of Webb's stock, they were presumed to be influential shareholders and were requested to submit for qualification. See sections 105(d) and -85(d) of the Casino Control Act, N.J.S.A. 5:12-1, et seq. (the Act).[1]

By petition no. 281704 submitted October 8, 1987, IEP and APF, whose holdings had increased to 9.8% of Webb's common stock, requested a waiver of qualification. This petition was subsequently withdrawn when the Director of the Division of Gaming Enforcement (Division) indicated that he would not concur in a waiver, as required by section 85(d)(1) of the Act.

On October 27, 1987, in connection with the 1987-88 CPP and DEWNJ license renewal hearing, with the concurrence of

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1. At times, sections of the Act are cited by reference to the section number only. The full citation may be obtained by adding the prefix "N.J.S.A. 5:12- ."

the Director of the Division, IEP and APF received a temporary and conditional waiver of qualification. Under the waiver, IEP and APF were directed to file a stock proxy agreement neutralizing voting, prohibiting IEP or APF from exercising control over Webb, and requiring approval from a designated commissioner prior to any communications between Webb and IEP or APF.

By petition no. 277801 submitted October 3, 1988, IEP and APF requested a rehearing of their petition for a waiver of qualification. On October 24, 1988, the Commission denied the request and ordered IEP and APF to file, by November 23, 1988, a completed application for interim casino authorization (ICA), pursuant to section 95.12(b) of the Act.

IEP and APF never applied for an ICA, as required by the Act and as ordered by the Commission. On December 9, 1988, the Division filed a complaint against IEP, APF, CPP, DEWNJ, Webb, and The Claridge Hotel and Casino Corporation (CHC), an intermediary company of Webb and CPP. In its complaint, the Division requested the entry of an order finding IEP and APF to be per se disqualified for their failure to file a completed ICA application pursuant to section 95.12(b) of the Act, and compelling IEP and APF to divest their Webb securities by a date certain. The Division also requested, pursuant to section 105(e) of the Act, that CPP, DEWNJ, and Webb be ordered not to pay any dividends, interest, or remuneration in any form to IEP or

APF, and also be ordered to prevent IEP and APF from exercising, directly or through any trustee or nominee, any rights conferred by the securities in question. Finally, the Division requested that, in the event IEP and APF did not divest the securities in question by a date certain, Webb immediately cause the divestiture of all Webb securities held by IEP and APF.

By letter submitted January 9, 1989, CPP, CHC, DEWNJ and Webb responded to the Division's complaint, agreeing only that Webb would make a good faith effort, including the prosecution of all legal remedies, to comply with any divestiture order of the Commission if IEP and APF were ordered to divest their Webb stock but failed to do so. These respondents also contended that the Commission need not take any further action against them at that time.

Pursuant to section 108(c) of the Act, IEP and APF were required to file a Notice of Defense by January 17, 1989. IEP and APF responded to the Division's complaint on January 19, 1989, by filing an untimely request for an extension of time to file an ICA application.

On January 25, 1989, the Commission, sitting with one vacant position, voted three to one in favor of a motion to grant a 30-day extension. Counsel for the parties were then offered the opportunity to brief the question of whether three or four votes were required to carry the motion for the 30-day extension.

On January 26, 1989, IEP submitted a petition for a declaratory ruling that three votes were sufficient to carry the January 25, 1989, motion, or alternatively, for a rehearing of the petition requesting an extension. The Division objected to the rehearing request and also recommended that the Commission find that four votes were required to carry the January 25, 1989, motion to extend.

II. REQUEST FOR EXTENSION OF TIME TO FILE AN ICA APPLICATION

The ICA provisions, which became effective on January 14, 1988, establish a mechanism to permit continuous casino operations when property or other interests relating to an operating casino have been transferred and the transferee has not been fully licensed or qualified. Where, as in the instant matter, a transfer occurs through the purchase of publicly-traded securities, section 95.12(b) requires that the purchaser file a completed ICA application within 30 days after the Commission determines that qualification is required under section 84, or that qualification should not be waived under section 85(d)(1). The Commission may extend the 30 day filing period, but prerequisites of any such extension are the submission of a written acknowledgement of the Commission's jurisdiction and a demonstration of good cause. Failure to file an ICA application in a timely manner constitutes a per se disqualification under the Act.

Section 95.12(a) provides an interim authorization procedure for transfers of all property other than publicly traded securities. It is worth noting that no such transfer may take place until the complete ICA application has been submitted and a favorable ICA ruling obtained. Thus, section 95.12(b) constitutes an exception for publicly-traded securities whereby, in order to accommodate the demands of the public market, the interest is obtained by the transferee before the ICA process is begun. In this respect, public security acquisitions create a potential vulnerability of the regulatory system to entry and influence by untested investors. As will be seen, this vulnerability is most acute before the ICA application is filed.

A mandatory part of any ICA application is a trust agreement which conveys to a trustee all right, title and interest, including any voting rights, to the property being transferred. See section 95.14(a). The trustee must sell the property if the ICA applicant is denied interim authorization or is found unqualified. The unsuccessful ICA applicant also may not obtain any profit from the sale, receiving only its actual cost of the property sold. See section 95.14(e). Moreover, even if interim authorization is granted, an ICA applicant may not participate in the earnings of a casino hotel or receive any returns on its investment until it is ultimately found qualified by the Commission. See section 95.14(c).

The ICA procedure promotes stability and continuity in casino gaming operations in the event of property transfers, and provides an orderly method of permitting such transfers while satisfying vital law enforcement concerns. See section 1(b)(16). The ICA procedure was also designed to deal with the effects of significant changes in the ownership of the securities of casino licensees and their publicly-traded holding companies. By precluding any profit on its investment until an ICA applicant has been found qualified, and precluding any profit on the sale of its investment if it is disqualified, the ICA procedure deters potential investors who would otherwise disrupt casino operations by dabbling in the publicly traded stock of casino holding companies in the hopes of a short-term profit without undergoing regulatory scrutiny for qualification and licensure. With this background, we may proceed to the question of the number of votes needed for an extension of time to file an ICA application with respect to publicly traded securities.

Two different provisions of the Act govern the question of how many votes are required to grant such an extension. As noted, Section 95.12(b) provides in part that, in cases relating to the acquisition of publicly-traded securities of a holding or intermediary company, an ICA must be filed "within 30 days after the Commission...declines to waive qualification under [Section 85(d)(1) of the Act] or within such additional time as the commission may for good cause

allow...." Section 73(d) of the Act provides in part that: "[a] majority of the full commission shall determine any action of the commission, except that no casino license or interim casino authorization may be issued without the approval of four members...."

Although the provisions of the Act concerning an ICA are relatively new, there is ample precedent concerning voting procedures and requirements for a casino license and investor qualification, to which an ICA is closely related and for which it effectively substitutes. Consistent with general rules of statutory construction, we have construed the four-vote casino license requirement in connection with the other sections of the Act relating to casino licensure, so as to produce a harmonious whole. Wager v. Burlington Elevators, Inc., 116 N.J. Super. 390, 395 (Law Div. 1971). It would be illogical to construe the Act as permitting all the various requirements for a casino license to be approved by three-vote decisions, and then, when nothing further remains to be approved except the issuance of the license itself, requiring a four-vote approval for what would be essentially a mere ministerial act. By requiring four votes for all integral components of a casino license, we have avoided rendering any part of the statute superfluous or meaningless. Hoffman v. Hock, 8 N.J. 397 (1952).

Thus, we have always required four votes for the approval of any integral components of a casino license, such as a lease involving a casino hotel or the land

thereunder, see section 82(b)(2), an agreement for the management of a casino, see section 82(b)(3), and the qualifiers of a casino licensee or its holding companies, see sections 82(b)(4) and 85(c) and (d).

For example, in connection with our consideration of the application of Playboy-Elsinore Associates (PEA) for a casino license in 1982, we were required to determine the qualifications of Hugh M. Hefner, the president and a major shareholder of Playboy Enterprises, Inc. (PEI), a general partner of PEA. See section 85(d). At the conclusion of the PEA hearing, three of the five commissioners found that Mr. Hefner had established, by clear and convincing evidence, his good character, honesty and integrity to participate in casino operations That is, they found he had met the requirements applicable to a casino key licensee. See section 89. However, on the basis of the four-vote requirement in section 73(d), Mr. Hefner was not found qualified. See In the Matter of the Application of Playboy-Elsinore Associates for a Casino License, Docket No. 81-CL-3, pp. 136-138.[2] As a result, PEA's license application would have been denied if PEI and Hefner had not divested themselves of their interest. See Resolution No. 82-246, pp. 37-38.

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2. The decision finding Hefner unqualified despite the three to two vote in his favor was affirmed in an unreported decision of the Appellate Division. App. Div. Docket No. A-4188-81T1 (August 31, 1983).

Like a casino license, an ICA also requires four votes. Because an ICA actually substitutes, on an interim basis, for a casino license or a finding of qualification, see section 1(b)(16) and section 95.12, the same reasoning concerning voting requirements should apply to an ICA. That timely filing of the ICA application was viewed by the Legislature as a crucial aspect of the process is demonstrated by the fact that an applicant is per se disqualified for failure to so file. See section 95.12(b). Thus, in this case the failure of IEP and APF to meet their obligations of timely compliance in order to maintain their privileged status under section 95.12(b), results in denial of their application.

As previously noted, the ICA procedure permits persons who have not yet been found qualified to become involved in casino operations on an expedited basis, provided that they perform in a responsible and expeditious manner as well. Recognizing that the regulatory system is at its most vulnerable point after the purchaser of publicly-held securities has become a significant holder and before a completed ICA application and trust agreement have been submitted, section 95.12(b) requires an ICA application to be submitted within thirty days. Time is of the essence in ICA matters if the goals of the ICA provisions are to be accomplished. Therefore, an extension of time, and particularly the necessary good cause showing, are

tantamount to affirmative authorization criteria which IEP and APF must demonstrate by clear and convincing evidence.

Like any request for a finding of compliance with a critical element of ICA approval, the extension request must obtain four votes, unless a vacancy has existed on the Commission for more than 60 days. Stated differently, if four votes are required for a finding of qualification for an ICA, as the Act expressly provides, then a lesser number of votes cannot be permitted to allow an applicant to enjoy indefinitely the benefits of the ICA provisions. It is the burden of the applicant to prove its suitability for ICA, including its timely compliance. It is not the burden of the State to prove otherwise. Hence, the extension of the period in which to file the ICA application, itself a component of ICA qualification, demands four votes. The three-to-one vote decision of January 25, 1989, was not sufficient to grant the extension of time that IEP and APF had requested. For that reason, the extension was denied and IEP and APF were unqualified to obtain an ICA with respect to their Webb holdings.

III. REQUEST FOR RECONSIDERATION

IEP and APF point out that there was a change in the Commission's voting requirements as of February 1, 1989, and contend that this change in circumstances merits a rehearing of their extension request. IEP and APF also argue that the "coincidence" of this change in voting requirements and the

scheduling of their extension request immediately prior to that change present an extraordinary situation that justifies a rehearing of the matter.

Section 73(d) of the Act provides that:

> A majority of the full commission shall determine any action of the commission, except that no casino license or interim casino authorization may be issued without the approval of four members. In the event that a vacancy has existed in the commission for more than 60 days, a majority of the full commission may act with respect to any matter, including the issuance of a casino license or interim casino authorization.

The Commission's voting requirements did change on February 1, 1989, because of the time elapsed since Commissioner Carl Zeitz's departure from the Commission. His term ended on August 4, 1988, as permitted by Section 52(h) of the Act, he served an additional 120 days until December 2, 1988, because his successor had not been appointed and qualified.

Since a fifth commissioner had not been qualified by February 1, 1989, a vacancy existed in the Commission for more than 60 days as of February 1, 1989. Thus, on February 1, 1989, a three-vote majority was sufficient to determine any matter brought before the Commission. Accordingly, the three-to-one vote which failed to grant the requested extension of time on January 25 would have succeeded on February 1.

IEP contends that this circumstance justifies a rehearing, arguing that the result in this matter should turn on its merits, and not on when the matter was heard.

Section 107(d) of the Act addresses rehearing and, in relevant part, states that:

> (1) The commission may, upon motion therefor made within 10 days after the service of the decision and order, order a rehearing before the commission upon such terms and conditions as it may deem just and proper when the commission finds cause to believe that the decision and order should be reconsidered in view of the legal, policy or factual matters advanced by the moving party or raised by the commission on its own motion.
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> * * *
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> (3) A motion for relief from a decision and order which is based on any ground other than the presentation of newly discovered evidence shall be governed as to both timeliness and sufficiency by the regulations of the commission which shall be modeled, to the extent practical, upon the rules then governing similar motions before the courts of this State.

Rule 4:50-1(a)-(e) of the New Jersey Court Rules permits matters to be reopened for various reasons, including mistake, newly discovered evidence and fraud. Additionally, subsection (f) of this court rule provides that "[o]n motion, with briefs, and upon such terms that are just, the court may relieve a party or his legal representative from a final judgment or order for ... any other reason justifying relief from the operation of the judgment or order." As noted by the New Jersey Supreme Court in Court Investment Company v. Perillo, 48 N.J. 334, 341 (1966), "No categorization can be made of the situations which would warrant redress under subsection (f). [T]he very essence of (f) is its capacity for relief in exceptional situations. And in such exceptional cases its

boundaries are as expansive as the need to achieve equity and justice."

However, we fail to see anything exceptional or extraordinary about this situation. As counsel for IEP and APF conceded at the February 1 hearing, there were no changes in the facts or the substantive law applicable to this matter in the week since the January 25 hearing. The only difference was the above-mentioned change in voting requirements occasioned by the 60-day vacancy on the Commission. In our opinion, this change does not constitute the type of change in circumstances which would justify a rehearing in this matter. To hold otherwise would require the rehearing of all matters decided by three-to-one votes during the sixty-day period after a vacancy occurs. In effect, this would cancel the 60 day period and result in all matters being decided by three votes immediately after a vacancy. We cannot conceive that the Legislature intended such a result.

We agree that, as a general principle, the decision in this or any matter should not hinge upon when it is heard. However, rehearing this matter on a later date so as to produce a certain preconceived result or to alter a prior result, does nothing to advance that principle, and in fact appears to be completely contrary to that idea. Moreover, it was no coincidence that the extension request was heard toward the end of the 60 day post-vacancy period. It was

IEP which failed either to file a completed ICA application or to request an extension by the statutory 30 day deadline which fell on November 23, 1988, well before Commissioner Zeitz left the Commission on December 2. Thus, five votes would have been available if IEP acted promptly. Further, it was IEP's continued inaction, until the Division lodged a complaint, and indeed beyond the time for answering the complaint under section 108, which brought the extension request before the Commission near the close of the 60 day period. Even if an appropriate case for rehearing after the 60 day period could be imagined, the equities argue strongly against rehearing in this matter. For all of the above reasons, the rehearing request is denied.

Since IEP and APF have failed to file a completed ICA application in a timely manner, as required by the Act and our previous Order No. 88-298, IEP and APF are per se disqualified pursuant to section 95.12(b) of the Act. Accordingly, we order that notice of the disqualification of IEP and APF be served upon CPP, DEWNJ, and Webb as well as IEP and APF, and we further order that:

1. IEP and APF shall, within 120 days, divest all of their Webb securities, subject to the prior approval of the Commission, except in the case of open market sales;

2. No dividends or interest shall be paid by CPP, CHC, DEWNJ or Webb, or be received by IEP or APF, with respect to the Webb securities held by IEP and APF;

3. IEP and APF shall not exercise, directly or through any trustee or nominee or otherwise, any rights

conferred by such Webb securities, and CPP, CHC, DEWNJ, and Webb shall not allow or permit IEP or APF to exercise any such rights;

4. No remuneration in any form, for services rendered or otherwise, shall be paid by CPP, CHC, DEWNJ, or Webb, or be received by IEP or APF, with respect to such securities.

SUPPLEMENTAL OPINION - PUBLIC MEETING OF MAY 24, 1989

FACTS

On March 22, 1989, IEP and APF appealed the Commission's February 6, 1989, Order denying reconsideration of its January 25, 1989, decision to the Appellate Division. They also filed a motion with the Appellate Division for a limited remand, in order to enable them to petition the Commission for a reconsideration of its decision to deny an extension. Neither the Division nor the Commission opposed the motion, and on April 10, 1989, the Appellate Division remanded the matter. On April 25, 1989, IEP and APF filed a motion for a rehearing which was accompanied by an executed trust agreement, a Personal History Disclosure form for an IEP officer, and incomplete Business Entity Disclosure forms for IEP and Brierley Investments Limited (BIL), which allegedly now owns approximately 70% of IEP. IEP also requested that the Commission vacate its disqualification order of February 6, 1989, deem IEP's ICA application complete, and dissolve the January 10, 1988, voting proxy agreement.

By letter dated May 17, 1989, the Division indicated that it opposed a reconsideration of the matter, and also opposed the granting of any extension of time if the matter was, in fact, reconsidered.

ANALYSIS AND DISCUSSION

The Commission did not oppose IEP and APF's motion for a remand because this second reconsideration request relies upon a different theory than the first one. Unlike the first reconsideration, which was based upon sections 107(d)(1) and (3) of the Act, the present reconsideration request relies upon section 107(d)(2) of the Act, which provides that

> [u]pon motion made within a reasonable time, but in no event later than one year from the service of the decision and order, the commission may relieve a party from the decision and order upon a showing that there is additional evidence which is material and necessary and which would be reasonably likely to change the decision of the commission, and that sufficient reason existed for failure to present such evidence at the hearing of the commission or on a motion under paragraph (1) of this subsection. The motion shall be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not presented at the hearing or on a motion under paragraph (1) of this subsection. Upon rehearing, rebuttal evidence to the additional evidence shall be admitted. After rehearing, the commission may modify its decision and order as the additional evidence may warrant.

IEP and APF contend that the proposed trust agreement which they have now submitted constitutes new evidence, and is sufficient for a rehearing under section 107(d)(2) of the

Act. We disagree. The trust agreement is a required part of the ICA application which the Commission initially ordered IEP and APF to file by November 23, 1988. In our view, the term "additional evidence", however broadly defined, does not include a trust agreement which is statutorily required to be filed with the Commission. See section 95.14 of the Act. Additional evidence is not something which parties may create at their pleasure when it is deemed necessary.

Even assuming that the trust agreement is "additional evidence," we question whether it meets the remaining requirements of Section 107(d)(2) of the Act, and particularly, whether it is "reasonably likely to change the decision of the commission," and whether "sufficient reason existed for failure to present such evidence" at the January 25th or the February 1st hearings.

In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (A.D. 1985), certif. den. 102 N.J. 352 (1985), cert. den. 475 U.S. 1085 (1986), Frank Gerace requested a rehearing of a Commission ruling finding him disqualified. Relying on his constitutional right to avoid self-incrimination, Mr. Gerace had not testified at the original hearing because he was the subject of a federal grand jury investigation at the time. He was later willing to testify and wished to reopen the hearing for the purpose of offering his testimony, which he claimed was necessary, material, and would provide new

evidence. The Court upheld the Commission's finding that Gerace's explanation for his failure to testify at the first hearing did not meet the statutory requirement of "sufficient reason." The Court stated that "[Gerace's] decision not to testify was a tactical one. The Commission is not obligated to relieve him of the consequences of that choice because of a change of mind two years later. The Commission did not abuse its discretion in refusing to reopen the record to elicit Gerace's testimony." Local 54, id., at p. 344.

In our view, there are obvious parallels between the Local 54 case and the instant matter. IEP and APF chose to ignore the Commission's Order of October 24, 1988, the ICA application filing deadline of November 23, 1988, and the Division's Complaint of December 9, 1988. The allegation that there was a corporate "change of heart" in early January 1989 does not obligate the Commission to relieve IEP and APF from the consequences of their previous decisions. In any event, even if there had been such a change in corporate policy, it did not result in the filing of a completed ICA application by January 25 or February 1, 1989.

IEP and APF also contend that they "deserve another chance before a full five-member Commission as a matter of fairness." In the Local 54 case, supra, Mr. Gerace had also contended that a change in the composition of the Commission warranted a rehearing, so that any new members could express their views. The Court stated that such a contention was

"without merit," and that, if anything, any change in the Commission's composition rendered a rehearing inappropriate because the new members would not have heard the original evidence. See Local 54, supra, at p. 344. Thus, the fact that the Commission now has five members rather than four does not merit a reconsideration of this matter.

Lastly, IEP and APF renew their argument, which was advanced at the February 1, 1989, hearing, that this is an exceptional case because of the sequence of events which led to the initial denial. IEP and APF again argue that the denial was "a result of an accident of timing" and that "[t]he same vote total would have succeeded just days later." Accordingly, they contend that under section 107(d)(3) of the Act, which incorporates by reference R. 4:50-1(f), the Commission can and should reopen this matter. This argument was heard and rejected on February 1, 1989, and is rejected for the same reasons at this time.

The broad power of the Commission to reconsider matters is undisputed. See Petition of Hilton New Jersey Corporation for a Rehearing, public meeting of March 26, 1985. However, in our view, a sufficient showing has not been made for a rehearing of this matter. No "additional evidence" has been submitted, as required under section 107(d)(2) of the Act. No claims have been made that the Commission decided the matter incorrectly, misconstrued key testimony or overlooked crucial evidence. The only claim is that the Commission decided the matter at the "wrong" public

meeting (January 25 instead of February 1, when a three-to-one vote would have carried the motion to extend, assuming that the vote would have been three-to-one). We fail to see that such a circumstance is extraordinary or unfair, or that it otherwise merits a rehearing under any of the various provisions of section 107 of the Act. For these reasons, the rehearing request is denied.

Although our decision makes it unnecessary to consider IEP and APF's request to deem their ICA application complete, we note for the record that it is not. Both IEP and BIL have refused to disclose certain information in their respective BED's, and there are apparent and significant discrepancies in the materials submitted. No PHD was submitted for Bruce Hancox, although the Commission had ordered in October 1987 and again in October 1988 that one be filed. Lastly, the executed trust agreement which was submitted does not comply in all respects with the requirements of N.J.S.A. 5:12-95.14 and a form of trust agreement previously approved by the Commission. For all of the above reasons, the ICA application is not, and could not be deemed complete.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

Valerie H. Armstrong, Vice Chair

E. Kenneth Burdge

W. David Waters

Frank J. Dodd
(as to Supplemental Opinion only)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-317;88-EA-56
APPLICATION NO. 70196-22
REGISTRATION NO. 73034-40
OAL DOCKET NOS. CCC 1485-88;CCC 2593-88
ORDER NO. 88-45-2

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
	ORDER
v.	:
HENRY JACKSON, JR.,	:
Respondent;	:
and	:
APPLICATION OF HENRY JACKSON, JR. FOR A CASINO EMPLOYEE LICENSE	:

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 16, 1988,

IT IS on this 17th day of January 1989, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's determination that the respondent established his rehabilitation pursuant to N.J.S.A. 5:12-90(h) and -91(d). An insufficient amount of time has passed since the respondent's release from prison.

Further, respondent is scheduled to remain on parole until 1994; and

(2) to find the respondent disqualified from holding a casino employee license and casino hotel employee registration; and

(3) to waive the disqualification to the respondent's casino hotel employee registration pursuant to N.J.S.A. 5:12-91(e) for the reasons stated on the record at the Commission's meeting of November 16, 1988.

IT IS FURTHER ORDERED that the respondent's application for licensure as a casino employee is denied; and

IT IS FURTHER ORDERED that the respondent is permitted to retain his casino hotel employee registration and remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 1485-88 and CCC 2593-88 (Consolidated)

AGENCY DKT. NOS. 88-317 and 88-EA-56

HENRY JACKSON, JR.,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Henry Jackson, Jr., petitioner, pro se

Norma Stancil, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 29, 1988 Decided: October 5, 1988

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

STATEMENT OF THE CASE

This matter concerns the application by the petitioner, Henry Jackson, Jr., for casino employee license number 70196-22 in maintenance and cleaning. The Division of Gaming Enforcement (Division) takes no position with regard to a recommendation of licensure, however, it states that the petitioner is statutorily disqualified from licensure by reason of certain criminal convictions in 1978 and 1979. The Division seeks revocation of Mr. Jackson's casino employee registration number 73034-40, pursuant to Section 129 of the Casino Control Act (Act).

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The Division also questions whether petitioner possesses the requisite good character, honesty and integrity for licensure, pursuant to N.J.S.A. 5:12-98(b)2 as incorporated within Section 90b of the Act. Mr. Jackson asserts rehabilitaiton pursuant to Section 90h and 91d of the Act.

PROCEDURAL HISTORY

The Division filed a letter with the Casino Control Commission (Commission) taking no position with regard to petitioner's application for licensure on October 9, 1987. The petitioner requested a hearing on February 23, 1988. On April 4, 1988, the Division filed a complaint with the Commission seeking revocation of Mr. Jackson's casino hotel employee registration. On March 1, 1988, the Commmission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 22, 1988, and the matters were consolidated and scheduled for a hearing. The matter was heard on August 29, 1988, at the Brigantine Municipal Building, Brigantine, New Jersey. The record closed on the hearing date.

ISSUES

A. Whether the petitioner is disqualified from licensure and continued registration pursuant to N.J.S.A. 5:12-86c(1), based upon his 1977 and 1979 convictions for robbery, conspiracy and related offenses.

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

C. Whether petitioner may be demonstrate rehabilitation pursuant to Sections 90h and 91d of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed. Mr. Jackson's egregious criminal behavior prior to December 1978, is extensively documented and acknowledged:

The petitioner was arrested on December 14, 1971 by the Crisfield, Marlyand Police and charged with Larceny, comparable to N.J.S.A. 2C:20-1. The petitioner received a six-

The petitioner was arrested on July 8, 1977 by the Vineland Police and charged with Possession of Stolen Property, comparable to N.J.S.A. 2C:20-7 and Uttering a Forged Document, comparable to N.J.S.A. 2C:21-1. On November 30, 1977, the petitioner was charged with Uttering a Forged Instrument and Receiving a Stolen Check in Cumberland County Accusation No. A-180-77. The petitioner was found guilty of the charges and on December 19, 1977, was sentenced to the Cumberland County Jail for three months.

Mr. Jackson was arrested on January 10, 1979, by the Millville Police and charged with Armed Robbery, comparable to N.J.S.A. 2C:15-1 for the offense which occurred on December 15, 1978. On March 27, 1979, the petiioner was indicted in Cumberland County Indictment No. 453-78 which charged Robbery and Robbery While Armed, comparable to N.J.S.A. 2C:15-1. The petitioner subsequently entered a plea of guilty to the indictment. On July 9, 1979, Mr. Jackson was sentenced to a seven to fifteen- year prison term. The petitioner was also charged on this date with the commission of an Armed Robbery on December 12, 1978 in Vineland. On March 6, 1978, the petitioner was indicted in a fifty-three count Cumberland County Indictment which charged Armed Robbery, Assault and Weapons Offenses. On July 9, 1979, the petitioner was sentenced on the charges to a maximum term of ten years imprisonment, to run concurrent with the sentence imposed on Indictment No. 453-78.

By way of mitigation, Mr. Jackson states that he has been successfully employed by the Showboat Hotel, Casino and Bowling Center since March 2, 1987. He acknowledges his less than savory past; however, he stresses that his criminal conduct occurred along time ago and that he is a different person today. Mr. Jackson appears to have led a law-abiding existence since his release from prison in 1985.

The above is uncontroverted, documented, and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violaton of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on June 7, 1979 to Armed Robbery in violation of N.J.S.A. 2A:151-5, comparable to N.J.S.A. 2C:15-1 and Robbery, in violation of N.J.S.A. 2A:141-1. Based upon the Judgment of Conviction (R-5) and petitioner's testimony, I **CONCLUDE** that petitioner is statutorily disqualified from casino licesnure,

pursuant to Section 86c(1) of the Act. The 1977 conviction occurred more than ten years ago and as such, is not an automatic disqualifying offense.

(B) N.J.S.A. 5:12-90h and 91d

An applicant or a licensed petitioner in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by a affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Jackson is an applicant for a casino employee license in maintenance and cleaning. As such, he would have no responsibilities for actual gaming activities and would have limited contact with patrons of the casino.

Second, the petitioner was convicted of the following disqualifying offense:

On June 7, 1979, a violation of N.J.S.A. 2A:151-5, comparable to N.J.S.A. 2C:15-1, Robbery.

Under Section 86c(1) of the Act, Robbery is a statutory disqualifier. Armed Robbery is a crime of the first degree.

Third, the petitioner's misconduct has been subsequently mitigated by the fact that almost ten years elapsed since petitioner's last offense. Since the petitioner's release from prison in 1985, he has led a law-abiding existence.

Fourth, the petitioner committed his last offense in December 1978, almost ten years ago.

Fifth, the petitioner committed offenses until he was 24 years of age. It is likely that part of his past misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved the commission of various offenses over a period of seven years.

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

Eighth, Mr. Jackson is successfully employed by the Showboat Hotel, Casino and Bowling Center. His obvious commitment toward staying "out of trouble" and his willingness to accept responsibility for his previous criminal conduct persuade me that Mr. Jackson has made substantial efforts toward rehabilitation. It is significant the petitioner's last criminal act occurred almost ten years ago, a marked improvement over his egregious criminal past. While in prison, Mr. Jackson earned approximately 17 college credits while taking courses through Mercer and Cumberland County Colleges.

For the above reasons, I am persuaded that the petitioner has met his statutory burden to establish his rehabilitation by clear and convicning evidence. It is apparent that petitioner has a commitment to a total abstinence from misconduct. Furthermore, the petitioner's demeanor and credible testimony are positive factors when assessing rehabilitation.

I **CONCLUDE** from the totality of the circumstances that the petitioner has established, by clear and convicing evidence, his rehabilitation pursuant to Sections 90h and 91d of the Act.

(C) N.J.S.A. 12:98(b)2 as
incorporated within Section 90b

Under Section 89b(2) as incorported within Section 90b, Mr. Jackson is required to demonstrate by clear and convicing evidence his good character, honesty, and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (Februay 26, 1979) at 8. In Resorts, the Commission held that the individual's actual character and attributes of good character, honesty and integrity are the key.

Although Mr. Jackson's proofs were far from overwhelming, it appears the Mr. Jackson is sincere in his commitment to an abstinence from further criminal conduct. Mr. Jackson's conduct since being released from prison is the best indicia of good character, honesty and integrity that Mr. Jackson can present to the trier of fact.

I **CONCLUDE** that Henry Jackson, Jr. possesses the requisite good character, honesty and integrity for casino employee licensure, prusuant to N.J.S.A. 5:12-89b(2), as in corporated within Section 90b.

ORDER OF DISPOSITION

It is **ORDERED** that the application of Henry Jackson, Jr., for a casino employee license (#70916-22) be **GRANTED.** It is also **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of Henry Jackson, Jr. (#73034-40) be **DENIED.**

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

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

October 5, 1988
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

10-7-1988
DATE

Wanamne Forme
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 11 1988
DATE

Ronald L. Parker/K.S
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Letter, dated June 2, 1988, from Victor S. Battista, Parole Officer
P-2 Letter, dated July 6, 1988, from Marsha S. Stern, Executive Housekeeper, Showboat Hotel, Casino and Bowling Center
P-3 Letter, dated August 4, 1988, from Myron Motley
P-4 Letter, dated August 10, 1988 from Diane Cobbs

For the respondent:

R-1 Division of Gaming Enforcement Data Summary
R-2 New Jersey State Police Investigator Report, dated December 14, 1976
R-3 Arrest Report, dated December 23, 1976
R-4 Indictment No. 380-76, Superior Court of New Jersey-Law Division, Cumberland County
R-5 Judgment of Conviction, dated March 16, 1977
R-6 New Jersey State Police Investigation Report, dated May 15, 1977
R-7 Indictment 10-77, Superior Court of New Jersey, Law Division-Criminal, Cumberland County for Robbery and Armed Robbery
R-8 Judgment of Conviction, dated November 30, 1977, for Robbery and Armed Robbery
R-9 City of Vineland Police Arrest Report, dated July 8, 1977
R-10 Accusation A-180-77, Superior Court of New Jersey-Law Division, Cumberland County
R-11 Judgment of Conviction
R-12 City of Millville Police Department General Report, dated December 15, 1978
R-13 Vineland Police Department Arrest Report
R-14 Indictment No. 453-78, Superior Court of New Jersey-Law Division, Cumberland County
R-15 Judgment of Conviction, dated June 7, 1979, for Robbery and Armed Robbery
R-16 City of Vineland Police Department Arrest Report
R-17 City of Vineland Police Department Arrest Report
R-18 Indictment No. 454-78, Superior Court of New Jersey, Law Division-Criminal, Cumberland County
R-19 Judgement of Conviction, dated June 7, 1979 for Conspiracy
R-20 Indictment No. 438-78, Superior Court of New Jersey, Law Division-Criminal, Cumberland County
R-21 Judgment of Conviction, dated June 7, 1979, for Robbery and Armed Robbery
R-22 State of New Jersey, Division of Gaming Enforcement Investigative Summary Report, dated July 30, 1987

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-24
REGISTRATION NO. 74178-40
OAL DOCKET NO. CCC 8131-88
ORDER NO. 89-23-15

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

Complainant,

v.

ORDER

SYLVIA JACKSON,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 7, 1989,

IT IS on this 20th day of June 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that Sylvia Jackson's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8131-88
AGENCY DKT. NO. 89-24

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
SYLVIA JACKSON,
Respondent.

Norma L. Stancil, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Sylvia Jackson, respondent, pro se

Record Closed: April 17, 1989 **Decided:** April 21, 1989

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Sylvia Jackson's casino hotel employee registration no. 74178-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by

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reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), that the respondent had failed to disclose material information pursuant to section 86b, and therefore, she is disqualified from registration, pursuant to section 91b. The respondent contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so she could be employed in the casino services' wardrobe section at Caesar's Boardwalk Regency Hotel and Casino. By complaint to the Commission, filed July 14, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of hindering her own prosecution, in violation of N.J.S.A. 2C:29-3b(4); arson, in violation of N.J.S.A. 2C:17-1b(2); and arson, in violation of N.J.S.A. 2C:17-1b(3), two of which are disqualifying offenses under section 86c(1). The Division also objected to the respondent's continued registration pursuant to section 86b, alleging that the respondent failed to disclose material information on her application for registration regarding a material fact pertaining to the qualification criteria. Based upon the complaint, the Commission notified the respondent on July 20, 1988, that she had the right to a hearing, and that failure to respond within 15 days could result in her registration being revoked. By application dated October 19, 1988, which was received by the Commission on October 19, 1988, the respondent requested a hearing. On October 25, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on November 7, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Edgar R. Holmes on January 20, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:17-1b(2) Arson Third Degree, 2C:17-1b(3) Arson Third Degree.

B. Whether the respondent, with specific reference to her record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for her casino hotel registration within the meaning of section 86b.

C. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was held on April 17, 1989, in the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On March 29, 1984, there was a fire in a house owned by the respondent. Fire investigators determined that the origin of the fire was suspicious so the Atlantic County prosecutor's office criminal investigation section investigated the incident. Investigator John Fredericks interviewed the respondent. She informed him that she had moved out of the house because it had no utilities or heat. Investigator Fredericks indicated that the utilities and heat had been disconnected for nonpayment while the respondent testified that she had had the electricity turned off three days prior to the fire due to old, unsafe wiring which was "spitting fire." Investigator Fredericks determined that the respondent did not have any insurance on the house until three weeks before the fire. He determined that the fire had been started by kerosene or some other flammable liquid being placed on a sofa in the front room and lit by a cigarette. The respondent, on the other hand, indicated that there had been fire insurance throughout except for a brief two-month lapse in the policy which had occurred just prior to the fire. She testified that she had been barbecuing on the front porch of the house when the grill turned over and started a fire in the front of the house.

The respondent admitted to a neighbor, Florence Dickson, that she had placed clothes on the couch, placed kerosene on the clothes and had set the fire (P-1). The respondent first told investigators that she "may have or may not have" started the fire. Upon further questioning, the respondent told investigators that she "may have set the fire." Finally, while on her way to her arraignment on April 6, 1984, she told Investigator Fredericks, "I did it."

The respondent was arrested and charged with arson on April 5, 1984 (P-1, P-2 & P-3). On April 10, 1984, she was indicted by the Atlantic County grand jury in indictment number 0492-4-84-INV(B) and she was charged with hindering her own apprehension, prosecution, conviction, or punishment by volunteering false information to a law enforcement officer in violation of N.J.S.A. 2C:29-3b(4); arson, in violation of N.J.S.A. 2C:17-1b(2); and arson for the purpose of collecting insurance, in violation of

N.J.S.A. 2C:17-1b(3) (P-4). On April 23, 1984, the respondent entered a plea of not guilty to the charges. She was tried without a jury on August 6, 7 and 8, 1984, and was found guilty by the court. On September 28, 1984, the respondent was sentenced to serve 18 months probation on each count to be served concurrently and she was ordered to pay a $75 Violent Crimes Compensation Board penalty (P-5).

On September 17, 1985, a hearing was held in the Superior Court of New Jersey, Atlantic County, in the matter of Division of Youth and Family Services v. Shirley Jackson. This was a petition brought by the Division of Youth and Family Services (DYFS) for custody of the respondent's children. During the course of the proceedings, the respondent became unruly and abusive (P-6). At one point she stated to Judge Braithwaite, "maybe I'll write to the KuKluxKlan and ask them to blow your goddamn brains out . . . I can't do it myself . . . But they can. And they know a nigger like you . . . they know your kind. They know who you are . . . They get rid of Judges like you . . . " (P-6, at 16).

After the hearing, the respondent was arrested by Officer Donald M. Tullio, and she was charged with making terroristic threats towards the judge.[1] She was taken to the Atlantic City Police Department and her arrest was processed (P-7). A complaint was thereafter filed charging the respondent with making terroristic threats and the matter was referred to the Atlantic County Prosecutor's Office (P-8). On October 31, 1985, the Atlantic County grand jury returned an indictment against the respondent, indictment no. 85-10-1855-B, charging her with terroristic threats made against Honorable Dennis J. Braithwaite, J.S.C. in violation of N.J.S.A. 2C:12-3b.

At the hearing, the respondent admitted also being arrested in 1985 for beating a social worker. There is discussion in the transcript of the DYFS matter (P-6) that the respondent was convicted in Galloway Township of assaulting Christine Brock, a DYFS employee. The respondent, however, asserted that the certified copy of the judgment of conviction was a forgery and that the judge had dismissed the case.

---

1 The respondent asserted that Officer Tullio was not the bailiff at the DYFS proceeding as she had punched the bailiff and she did not recognize Officer Tullio.

On April 20, 1987, the respondent completed a Personal History Disclosure Form 4A which she filed with the Commission on April 28, 1987 (P-10). She indicated in response to question number nine that she had not "ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense . . . in New Jersey or anywhere else." Division Agent John Lugo was assigned to investigate the respondent's application. Upon conducting a Federal Bureau of Investigation and State Bureau of Investigation criminal history background check of the respondent, Agent Lugo learned of her arrest and conviction for arson and her arrest for communicating terroristic threats. Agent Lugo interviewed the respondent by telephone sometime in 1988. At that time, Agent Lugo read the respondent question nine in its entirety, including the definitional section. This question asks:

> For the purpose of this question, the word "arrest" includes any detaining, holding or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other state or foreign country; the word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign country; and the word "offense" includes all high misdemeanors, disorderly persons offenses and juvenile violations.
>
> Have you ever been arrested or charged, even if not convicted, with any felony, crime misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?

The respondent indicated that she understood the question. Agent Lugo then asked her if she had ever been arrested; she responded, "No." Agent Lugo then asked the respondent about her 1984 and 1985 arrests and the respondent again answered that she had not been arrested. Agent Lugo again questioned the respondent regarding the 1984 and 1985 arrests and this time the respondent responded that the arrests were false arrests.

The respondent is 40 years old. She earned 96 credits in three years of college at Rutgers University majoring in English. She is not a member of or participant in any charitable, fraternal, community or social organizations and she does not usually attend or participate in her church.

The respondent now is a self-employed writer. In 1986, the respondent worked in a Kentucky Fried Chicken store. From 1971 through 1977, the respondent worked as a

biller for Public Service Electric and Gas. From mid-1979 through 1981, the respondent worked as a waitress at the Vienna Inn Restaurant in Cologne, New Jersey. Finally, the respondent worked for one week in 1987 at Caesar's Boardwalk Regency Hotel and Casino in the casino services' wardrobe section. She was terminated from this position due to unsatisfactory performance during her probationary period. The respondent testified that other employees were using drugs in a ladies' room in which she discovered an overflowed toilet. She reported the overflowed toilet to maintenance, and she testified that her position was terminated because she did not follow the proper chain of command.

The Division did attempt to refute the respondent's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity. As such, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, she has a direct interest in the outcome and a bias in these proceedings. During both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I must view the respondent's testimony with skepticism.

FINDINGS OF FACT

1. On April 5, 1984, Sylvia Jackson was arrested and was charged with arson in Galloway Township, New Jersey.

2. On April 10, 1984, she was indicted by the Atlantic County grand jury in indictment number 0492-4-84-INV(B) and she was charged with hindering her own apprehension, prosecution, conviction, or punishment by volunteering false information to a law enforcement officer in violation of N.J.S.A. 2C:29-3b(4); arson, in violation of N.J.S.A. 2C:17-1b(2); and arson for the purpose of collecting insurance, in violation of N.J.S.A. 2C:17-1b(3).

3. On April 23, 1984, the respondent entered a plea of not guilty to the above charges. She was tried without a jury on August 6, 7 and 8, 1984, and was found guilty by the court. On September 28, 1984, the

respondent was sentenced to serve 18 months probation on each count to be served concurrently and she was ordered to pay a $75 Violent Crimes Compensation Board penalty (P-5).

4. On September 17, 1985, the respondent was arrested in Atlantic City, New Jersey and was charged with making terroristic threats towards Honorable Dennis J. Braithwaite, J.S.C., in violation of N.J.S.A. 2C:12-3b.

5. In 1985, the respondent was arrested in Galloway Township and was charged with and subsequently convicted of assaulting Christine Brock, a DYFS employee.

6. On April 20, 1987, the respondent completed a Personal History Disclosure Form 4A which she filed with the Commission on April 28, 1987. She indicated in response to question number nine that she had not "ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense . . . in New Jersey or anywhere else."

7. The respondent is 40 years old. She earned 96 credits in three years of college at Rutgers University majoring in English. She is not a member of or participant in any charitable, fraternal, community or social organizations and she does not ussually attend or participate in her church.

8. The respondent now is a self-employed writer. In 1986, the respondent worked in a Kentucky Fried Chicken store. From 1971 through 1977, the respondent worked as a biller for Public Service Electric and Gas. From mid-1979 through 1981, the respondent worked as a waitress at the Vienna Inn Restaurant in Cologne, New Jersey.

9. The respondent worked for one week in 1987 at Caesar's Boardwalk Regency Hotel and Casino in the casino services' wardrobe section. She was terminated from this position due to unsatisfactory performance during her probationary period.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S.A. 2C:17-1a. and b. (crimes involving arson and related offenses);
>
> . . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

> a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.
>
> b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend,

limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification

of the individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends, first, that the respondent committed a violation of N.J.S.A. 2C:17-1b(2), arson - recklessly placing a building or structure in danger of damage or destruction and N.J.S.A. 2C:17-1b(3), arson - with the purpose of collecting insurance for the destruction or damage to the property, which constitutes violations of N.J.S.A. 5:12-86c(1), and, second, that the respondent's nondisclosure of her arrests and convictions on her Personal History Disclosure Form - 4A constitutues a violation of N.J.S.A. 5:12-86b, and that, accordingly, she is disqualified from continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's conviction for burning of her house for the purpose of collecting insurance constitutes a conviction of N.J.S.A. 2C:17-1b(2) and (3), which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:17-1, Arson and related offenses, provides in pertinent part:

> b. Arson. A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's:
>
> . . .
>
> (2) Thereby recklessly placing a building or structure of another in danger of damage or destruction; or
>
> (3) With the purpose of collecting insurance for the destruction or damage to such property.

The Division established, and the respondent admitted during her testimony, that she had been convicted in Superior Court, Atlantic County, Law Division (Criminal) of two counts of arson in violation of N.J.S.A. 2C:17-1b(2) and (3). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent was convicted of a violation of N.J.S.A. 2C:17-1.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

In regard to the first criterion, Ms. Jackson is a casino hotel registrant and was employed in a casino services' wardrobe section. As such, she does not have direct responsibilities for actual gaming activities and does not come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:17-1, arson, prior to becoming employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was convicted of soaking clothes with kerosene and setting them on fire in order to burn down her house and collect on an insurance policy which she had recently reinstated. This is an extremely serious offense.

Fourth, the respondent's misconduct occurred in 1984. She was arrested twice again in 1985; once for assault upon a social worker and once for communicating terroristic threats against a superior court judge.

Fifth, the respondent was 34 years old at the time of the first offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. As indicated above, she committed two other violations of the criminal laws in 1985.

Seventh, two superior court judges have questioned the respondent's mental state. Judge Greenberg, as part of his sentence in the arson case, directed that the respondent be interviewed for possible mental health treatment. In the DYFS matter, Judge Braithwaite ordered the respondent to undergo a psychiatric evaluation. In both cases, the respondent failed to comply with these directives as she is happy with her life and her person.

Eighth, the respondent has made no rehabilitative efforts. In fact, she asserts that she need not make any rehabilitative efforts as she is pleased with herself. At times she admitted her misconduct and yet she believes the arrests are false arrests and that the certified copy of her conviction and other police records were fabricated by the deputy attorney general and are fraudulent. She has twice refused to undergo court-ordered psychiatric counseling as she does not believe she needs it. She is not active in any community, social, charitable, fraternal, or religious organization. The transcript of the DYFS matter (P-6) and the respondent's testimony at this proceeding do not reflect a person who is rehabilitated from her misconduct.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[2] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent was a casino employee wardrober. She had no responsibility for any casino gaming activity and no contact with casino patrons. Considering the nature of the position she held, the respondent's brief work record in the industry, her demeanor and candor at the hearing, the seriousness of her offense, her subsequent misconduct, her lack of involvement in the community, and her refusal to accept psychiatric counseling, when weighed against the eight rehabilitative criteria:

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

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of the Application of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at pages 15-16 of its Final Decision:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set

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2 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

> forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission, 78-EA-8 (Jan. 30, 1980) Final Order at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, Final Decision at 16; In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), affirmed, Casino Control Commission (Jan. 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (Sept. 5, 1980). For a nondisclosure to result in a disqualification it must have been committed intentionally or in disregard of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 253 (1979).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 91 of the Act. To excuse an intentional

failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

In this case, the respondent at times admitted her underlying misconduct, her arrests, her court appearances, and her convictions. At other times, however, she asserted that the arrests were false arrests and that the deputy attorney general had fabricated the certified copy of the judgment of conviction, the arrest reports, the police reports, and other documentation. She admits the conduct, arrests, and convictions did occur but asserts that they are false arrests and therefore she does not accept them. Since she does not accept their validity, she did not disclose them on her Personal History Disclosure Form. The fact that the respondent does not accept the validity of the arrests does not change her affirmative responsibility to disclose the arrests. She made a conscious decision not to disclose her arrests because she does not accept their validity. This was not an inadvertent or ignorant failure to make a disclosure but an intentional nondisclosure, which was made in disregard of the regulatory process.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 5:12-86b, which disqualifies her from continued registration.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 74178-40 be revoked.

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

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

April 21, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

4/24/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 26 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Galloway Township Police Department Investigation Report, dated April 5, 1984

P-2 Galloway Township Police Department Arrest Report, dated April 5, 1984

P-3 Galloway Township Municipal Court Complaint, dated April 5, 1984

P-4 Superior Court of New Jersey, Law Division - Criminal, Atlantic County Indictment No. 0492-4-84-INV(B)

P-5 Certified copy of judgment of conviction, dated September 28, 1984

P-6 Transcript in the matter of DYFS v. Jackson, September 17, 1985

P-7 Atlantic City Police Department Arrest Report, dated September 17, 1985

P-8 Atlantic City Municipal Court Complaint, dated September 17, 1985

P-9 Certified copy of Superior Court of New Jersey, Law Division - Criminal, Atlantic County Indictment No. 85-10-1855-B

P-10 Personal History Disclosure Form 4A, dated April 20, 1987

For the Respondent:

None

WITNESSES

For the Petitioner:

Investigator John E. Fredericks, Atlantic County Prosecutor's Office
Officer Donald M. Tullio, Atlantic County Sheriff's Department
Agent John Lugo, Division of Gaming Enforcement

For the Respondent:

Sylvia Jackson, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-306; 87-EA-232
APPLICATION NO. 58509-21
REGISTRATION NO. 52717-40
OAL DOCKET NO. CCC 2471-88
ORDER NO. 89-2-9

APPLICATION OF JENNIFER M. JOHNSON
a/k/a JENNIFER MIXSON

AND

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

Complainant,

v.

JENNIFER M. JOHNSON,
a/k/a JENNIFER MIXSON
Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989,

IT IS on this 24th day of January 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 89-2-9

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2471-88
On Remand From
CCC 3375-87
Consolidated With
CCC 1712-87
AGENCY DKT. NO. 87-306, 87-EA-232

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JENNIFER M. JOHNSON,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Jennifer M. Johnson, respondent, pro se

Record Closed: October 12, 1988 Decided: November 17, 1988

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

On February 25, 1987, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) demanding that the respondent's casino hotel employee registration be revoked.

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On April 8, 1987, the Division filed a letter with the Commission recommending that the Commission deny casino employee licensure as a slot attendant to the respondent.

The gravamen of both the complaint and letter is respondent's alleged embezzlement from Thom McCann Shoe Stores in 1985. Respondent was diverted from the criminal justice system by way of a pretrial intervention program in that case.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted on May 26, 1987. The matter was scheduled for hearing on September 17, 1987 and continued to December 21, 1987 at respondent's request. On that date, respondent failed to appear and an initial decision was filed with the Commission indicating that the respondent had abandoned her request for a hearing.

Respondent satisfied the Commission of her desire to pursue the matter and on April 15, 1988 it was remanded to the OAL for hearing. A second prehearing order was issued June 17, 1988 and the plenary hearing was conducted on September 27, 1988. The record was held open until October 12, 1988 in order for respondent to submit letters from persons who might wish to comment upon her good character or fitness for licensure.

SUMMARY OF TESTIMONY

The respondent was born and raised in Atlantic City. She graduated from Holy Spirit High School and entered the United States Army. While in the Army she married, had one child, divorced, and earned 62 credits at the University of Maryland. She decided to leave the Army after eight years in order to pursue a civilian career and finish college. She received an honorable discharge. But her expectations of civilian life were not fulfilled.

Respondent was unable to obtain employment for almost a year after she left the army. When she did obtain employment she created an impediment to future casino employment by committing a crime. Respondent was hired by Thom McCann Shoe Stores. Within one month she was promoted to assistant manager. As assistant manager she made bank deposits. Some of the bank deposits she was to make were used by her to pay her debts. She was discovered, apprehended, charged, and diverted to pretrial intervention. She reimbursed the store more than $2,500.00. She borrowed the money from her mother who borrowed the money from a finance company. Her mother already had an outstanding loan at the finance company. The respondent agreed to repay both loans as a condition of receiving the loan from the mother. She is still repaying them.

The respondent is presently working both as a waitress in a casino hotel restaurant and as a post office employee in Absecon. She has two full time jobs. She is proud of the fact that her daughter attends the Christian School in Linwood. The child's father pays tuition for the child and has visitation every weekend. Respondent's mother and ex-mother-in-law help her with her daughter. These arrangements permit the respondent to work two full time jobs. At both places of employment the respondent has many friends and supporters,who wrote letters on her behalf.

The respondent never denied that she embezzled money from Thom McCann's Shoe Store. She acknowledged that she did so. At the same time, she was less than candid in describing the theft. She used qualifiers at every opportunity, and did not "remember" some of the transactions. This was apparently a multiple theft aggregating over $2,500. It began on February 9, 1985 and continued until May 17, 1985.

LEGAL DISCUSSION

The Casino Control Act lists certain crimes, conviction of which disqualifies an applicant for casino employee licensure and may disqualify one for casino hotel registration. N.J.S.A. 5:12-86c, 90e and 91b. In addition, whenever conduct is not prosecuted under the laws of this State, the Division of Gaming Enforcement may nevertheless prove the conduct constitutes an offense under the laws of this State

for the purpose of showing a disqualification. N.J.S.A. 5:12-86g. Here the State did not prosecute the crime but diverted it into the Pre Trial Intervention Program (PTI).

The crime sought to be proved here, N.J.S.A. 2C:20-9, theft in the third degree, is a disqualifier. N.J.S.A. 5:12-86c(1). It was at common law the crime of embezzlement. Under common law embezzlement always meant that a breach of a trust relationship occurred. *State v. Palumbo* 137 N.J. Super. 13, (App. Div.) 347 A.2d. 535 (1975). It is now considered to be the failure to properly dispose of property which is "subject to a known legal obligation to make specified payment or other disposition..." and treating the property as the perpetrators own. It is a crime of the third degree if the amount involved exceeds $500. N.J.S.A. 2C:20-2 b(3). The individual amount embezzled from time to time may be aggregated to determine the degree of the crime. N.J.S.A. 2C:20-2b(4).

DISQUALIFICATION

There is no question this respondent committed the third degree crime of theft contrary to N.J.S.A. 2C:20-9. The amount of her embezzlement exceeds $500. The property (in this case, money) was to be disposed of by her by making a deposit in her employer's bank. She failed to make that deposit and used the money to pay her own debts. I **FIND** that the respondent committed acts which constitute third degree theft contrary to N.J.S.A. 2C:20-9. I **CONCLUDE** that the respondent is disqualified from casino employee licensure and should be disqualified from casino/hotel registration unless saved from disqualification by virtue of an affirmative showing that she is rehabilitated pursuant to N.J.S.A. 5:12-90h and/or 91d.

REHABILITATION

The **Casino Control** Act permits lower level employees to save their gaming licenses and registrations from revocation if they can affirmatively show that they are rehabilitated, sections 90h and 91d.These provisions of the statute are basically the same and require that the following factors be considered in discussing rehabilitation:

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

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

I FIND as follows:

1. As a registrant the respondent is a waitress in a casino hotel restaurant. She seeks licensure as a slot attendant. In both positions she will have access to casino patrons and to money.

2. The conduct complained of is a serious crime. The respondent breached a trust imposed upon her by the terms of her employment.

3. The conduct was committed by the respondent in her capacity as assistant manager of a shoe store responsible for making bank deposits. She kept some of the deposits for her own use.

4. The conduct occurred throughout the period February 9, 1985 to May 17, 1985.

5. The respondent was 26 years old when she committed the offense.

6. This conduct has not been repeated but did continue for a period of three months in 1985.

7. No social conditions contributed to this conduct.

8. The respondent was granted PTI. She is fully employed and is well motivated and responsible. Her supervisors and co-workers hold her in high regard.

Because of the sensitive nature of casino gambling, the industry can ill afford the perception that it is staffed by criminal offenders. The purpose of the rehabilitation analysis is to aid in the assessment of the respondent's propensity, if any, to commit an offense in the future.

The statute does not permit even one mistake. First time offenders are disqualified as well as multiple offenders. Nevertheless rehabilitation from criminal conduct is a concept that has received legislative approval.

But rehabilitation cannot be invoked precipitately. Although this respondent is making satisfactory progress towards rehabilitation by reason of her good employment record and her payments of restitution, only three years have elapsed since she committed a crime which included a breach of an employer's trust. This respondent was a mature woman at the time. She was an honorably discharged veteran of eight years in the United States Army and must have known better.

The offense was a continuing one for a period of three months, not the careless act of a moment. These factors lead me to **CONCLUDE** that the respondent has not affirmatively proved that she is rehabilitated within the intention of N.J.S.A. 5:12-90h and 91d.

GOOD CHARACTER, HONESTY AND INTEGRITY

Applicants for casino employee licensure, unlike applicants for casino hotel registration, must prove by clear and convincing evidence that they possess good character, honesty and integrity in addition to possessing other indicia of qualification. N.J.S.A. 5:12-89b(2) and 90b.

The purpose of this test is also to aid in predicting the future conduct of the licensee vis a vis the regulatory scheme. But it is a sharper test and more difficult than a mere affirmative showing of rehabilitation. This is necessary because

licensees will have contact with casino patrons and with relatively large sums of money. The nature of the licensee's work places him or her in a position of trust over money belonging either to patrons or to the casinos. This trust cannot be violated.

Because the respondent violated a trust for a period of three months only three years ago, because she was not completely candid regarding her conduct during that period of time and for the further reasons elaborated above under the rehabilitation analysis, I **CONCLUDE** that the respondent has not proved by clear and convincing evidence that she possesses the requisite good character, honesty and integrity for casino employee licensure. N.J.S.A. 5:12-89b(2) and 90b.

ORDER AND DISPOSITION

It is **ORDERED** that the respondent's casino employee registration be **REVOKED** and it is **FURTHER ORDERED** that the respondent's application for casino employee licensure be **DENIED**.

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

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

November 17, 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

Nov 21, 1988
DATE

Christina E. Beaver
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 22, 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Jennifer M. Johnson

For the Respondent:

Jennifer M. Johnson

EXHIBIT LIST

For the Petitioner:

P-1 Atlantic City Police Department Report

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-130
APPLICATION NO. 41780-21
OAL DOCKET NO. CCC 2672-88
ORDER NO. 89-11-9

APPLICATION OF MARVA M. JOHNSON — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 29th day of March 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /sd
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2672-88
AGENCY DKT. NO. 88-EA-130

MARVA M. JOHNSON,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Marva M. Johnson, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Record Closed: January 27, 1989 Decided: February 7, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Marva M. Johnson, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack floorperson and craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and

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integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a blackjack dealer and floorperson and a craps dealer in the casino industry. By letter to the Commission, dated December 8, 1987, the Division objected to the petitioner's application for licensure as a blackjack floorperson and craps dealer, asserting that the petitioner had committed the offense of theft by deception (third degree), in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division further objected asserting that the petitioner lacked the necessary financial responsibility for licensure as provided in section 89b(1), as incorporated in section 90b. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on February 1, 1988, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated April 6, 1988 [sic], which was received by the Commission on March 6, 1988, the petitioner requested a hearing. On April 11, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on April 15, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before me on June 20, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.

B. Whether petitioner possesses the requisite financial stability for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(1) as incorporated in section 90b.

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

D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled for October 28, 1988. By notification dated September 26, 1988, the petitioner was informed of the time and location of the hearing. On the date of the scheduled hearing, the petitioner failed to appear. On October 31, 1988, the petitioner notified my office that she had been in New York on the hearing date and requested that the hearing be rescheduled. This request was granted, and the hearing was rescheduled.

A hearing was held on January 27, 1989, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

At the hearing, the respondent made a motion to withdraw the section 89b(1) issue which was contained in issue B of the prehearing order. Counsel indicated that it was not the Division's usual practice to include section 89b(1) issues in licensing objection cases which are based upon the petitioner's alleged wrongful receipt of unemployment benefits. The respondent's motion was granted, and the financial stability issue was not considered at the hearing.

THE FACTS

In 1982, the petitioner became employed as a security guard at the Playboy Hotel and Casino. This was a temporary position which she remained in for only six months. As she had already obtained a casino employee license as a blackjack dealer, the petitioner sought other employment. Later in 1982, the petitioner was hired by Bally's Park Place as a blackjack dealer. She remained employed at Bally's for two and one-half years, until December 1984.

On January 20, 1985, the petitioner filed a claim for unemployment benefits at the Atlantic City office of the Division of Unemployment and Disability Insurance (R-5a). Upon application, the petitioner was informed that it was her obligation to inform her

local unemployment office of any changes in her employment status. The petitioner was determined to be eligible for benefits in the amount of $203.00 per week (R-5a). An eight-week penalty was imposed, and the petitioner did not begin receiving any unemployment benefits until March 29, 1985 for the week ending February 23, 1985 (R-5a).

In June 1985, the petitioner became employed at Trump's Castle Hotel and Casino as a blackjack dealer. The petitioner did not report this employment to her local unemployment office. Her unemployment claim terminated when she exhausted her benefits on August 17, 1985 (R-5a). During this period, the petitioner earned $4,680.79 (R-3c & R-6a). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $2,233.00 (R-3c & R-6a). The petitioner remained employed at Trump's Castle for approximately one year.

In late 1985, the petitioner had a car accident and went on disability. The petitioner testified that after recuperating, she returned to work at Trump's Castle until she was terminated in May or June 1986.

On July 27, 1986, the petitioner filed a second claim for unemployment benefits at the Atlantic City office of the Division of Unemployment and Disability Insurance (R-5b). Upon application, the petitioner was again informed that it was her obligation to inform her local unemployment office of any changes in her employment status. The petitioner was determined to be eligible for benefits in the amount of $214.00 per week (R-5b).

Payroll records at Trump's Castle indicate that the petitioner was employed at Trump's Castle at the time she filed the unemployment claim. These records indicate that she was not terminated at Trump's Castle until September 14, 1986 (R-3a).

On October 17, 1986, the petitioner became employed as a pit clerk at Harrah's Marina Hotel and Casino. She retained this employment until December 6, 1986 (R-3b). The petitioner did not report her employment at either Trump's Castle or Harrah's Marina to her local unemployment office, and she continued to receive unemployment benefits into February 1987 (R-5b). During this period, the petitioner earned $2,497.55 while employed at Trump's Castle (R-3a) and $2,000.63 while employed at Harrah's Marina (R-3b). Because the petitioner failed to notify her local unemployment office of her

employment, she received unemployment benefits to which she was not entitled in the amount of $1,475.00 (R-3a, R-3b & R-6b).

The petitioner did not work in 1987 until the opening of the Showboat Hotel and Casino. She became employed as a blackjack and craps dealer. She was terminated after her 90-day probationary period based upon her overall performance.

The petitioner was then employed for two months as a pit clerk at the Tropicana Hotel and Casino. She was terminated during her probationary period for excessive absenteeism. (She had four unexcused absences.)

On March 2, 1987, the Department of Labor (Department) notified the petitioner that it would be conducting a hearing on March 9, 1987, concerning the unemployment benefits she had received between June 2, 1985 and December 6, 1986, while the petitioner had been employed (R-4). The petitioner failed to attend the hearing. The Department thereafter made a determination in the case based on the record. On April 2, 1987, the Department determined that the petitioner had received unemployment benefits in benefit year 1985 in the amount of $2233.00, which she was not entitled to receive, and it imposed a fine of $558.25 for a total claim of $2,791.25 (R-2b). The Department further determined that the petitioner had received unemployment benefits in benefit year 1986 in the amount of $1,414.00, which she was not entitled to receive, and it imposed a fine of $352.25 for a total claim of $1,766.25 (R-2a & R-2c). The Department then filed a certificate of debt for $5,413.50 in the Superior Court of New Jersey on June 26, 1987, and a judgment was entered and docketed on July 29, 1987 (R-1). The petitioner was never charged with any criminal offense arising out of this incident.

The petitioner offered to enter into a repayment agreement with the Department at a rate of $25.00 per month; however, that offer was rejected as being insufficient. The petitioner has been unemployed and unable to repay the debt. Her state income tax refund has been withheld and applied to her New Jersey Higher Education Assistance Fund loan and to this debt.

At age 14, the petitioner entered into a relationship with a man. At 17 she had a son. At 19 she became employed at Bally's. The petitioner is presently 25 years of age. After working at Bally's, her boyfriend left her with her son and all the bills. She exhausted her funds. She was in school at the time and her son was in private school. She

fell behind in her rent and car insurance, had to withdraw from school, and had to enroll her son in public school. Due to these debts, she did not report her new employment to her local unemployment office. Her income was insufficient and she continued to look for a second job. The petitioner felt like the money was hers and she needed it.

The petitioner is presently on public assistance and is enrolled in the ACE program in Atlantic County. This program is going to fund a training program in cosmetology for the petitioner which is scheduled to begin February 6, 1989, at the Atlantic County Vocational School. She is a high school graduate. She enrolled in Atlantic County Community College last fall; however, when she was evicted from her apartment, she lost her books and had to withdraw from school. Her son's father is in jail and does not contribute to his support.

She has worked for Eastern Service Workers in the past, is a member of St. Pauls A.M.E. Church, and attends the Faith Baptist Church with her son. She has also sold candy to help support her local little league. The petitioner is presently in debt for approximately $20,000.00.

The petitioner regrets her misconduct and partially blames it on her immaturity. She feels terrible about her misconduct, but she has no funds with which to make restitution. She has no education and her only work experience is in the casino industry.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with her financial and family affairs. At the time the petitioner obtained a job and failed to disclose this fact to her local unemployment office, she was in a difficult living arrangement. Her boyfriend had deserted her family and the petitioner was only concerned with providing a home for her son. She was in debt, working, and attending school in order to attempt to better her life. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate somewhat the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner first received unemployment benefits from March 23, 1985, through August 17, 1985.

2. On or about June 3, 1985, the petitioner became employed at Trump's Castle Hotel and Casino.

3. Between June 3, 1985, and August 17, 1985, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of $2,233.00 to which she was not entitled.

4. The petitioner received unemployment benefits a second time from July 27, 1986, through February 1987.

5. The petitioner was employed at Trump's Castle at the time she filed for unemployment benefits. She terminated her employment at Trump's Castle on September 14, 1986, was hired at Harrah's Marina on October 17, 1986, and left Harrah's Marina on December 6, 1986.

6. Between July 27, 1986, and December 6, 1986, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of $1,475.00 to which she was not entitled.

7. The Department of Labor determined that the petitioner had received unemployment benefits in benefit year 1985 in the amount of $2233.00, which she was not entitled to receive, and it imposed a fine of $558.25 for a total claim of $2,791.25. The Department further determined that the petitioner had received unemployment benefits in benefit year 1986 in the amount of $1,414.00, which she was not entitled to receive, and it imposed a fine of $352.25 for a total claim of $1,766.25.

8. On June 26, 1987, the Department of Labor filed in the Superior Court of New Jersey a certificate of debt against the petitioner. On July 29, 1987, a judgment was entered and docketed against the petitioner in the amount of $5,413.50.

9. The only restitution made by the petitioner has been the withholding of her state income tax refund.

10. At the time of the first false claim, the petitioner was 21 years of age, had been deserted by her boyfriend, was raising her son, was attending school, and was in debt. At the time of the second false claim, the petitioner was 22 years of age.

11. The petitioner is currently 25 years of age and is unemployed.

12. The petitioner is presently on public assistance and is enrolled in the ACE program in Atlantic County. This program is going to fund a training program in cosmetology for the petitioner which is scheduled to begin February 6, 1989 at the Atlantic County Vocational School.

13. The petitioner has worked for Eastern Service Workers, attends church, and sells candy for her local little league.

14. The petitioner is remorseful and has not been involved in any other criminal conduct.

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APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ...
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> ...
>
> N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> ....
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State....

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

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> ....
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and

convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and

regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

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

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of $500 between March 23, 1985 and August 17, 1985, while she was employed by Trump's Castle and her receipt of unemployment benefits in excess of $500 between July 27, 1986, and December 6, 1986, while she was employed at Trump's Castle and Harrah's Marina constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by

> statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[1] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked — or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during her testimony, that she knowingly received unemployment benefits to which she was not entitled from the Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

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[1] N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Ms. Johnson is a gaming casino employee and works as a blackjack dealer and floorperson and a craps dealer. As such, she does have direct responsibilities for actual gaming activities and does have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception - third degree, over eleven and thirteen-week periods during which she was employed in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner's boyfriend, the father of her child, deserted the family and did

not contribute any further to the support of the family. The petitioner was a young mother, and she was simply concerned with providing for her family in a time of crisis. She exhausted her funds. She was in school and her son was in private school. She fell behind in her rent and car insurance, had to withdraw from school, and had to enroll her son in public school. Due to these debts, she did not report her new employment to her local unemployment office. Her income was insufficient and she continued to look for a second job. The petitioner felt like the money was hers and she needed it. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tends to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from June 3, 1985, until August 17, 1985, when it ceased. The petitioner's misconduct reoccurred from July 27, 1986, until December 6, 1986, when it ceased.

Fifth, the petitioner was 21 or 22 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned with maturity and such conduct will not occur again. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with her problems at that time. While this factor can mitigate the offense, it cannot excuse it.

Sixth, petitioner has not committed any other violation of the criminal laws since 1986.

Seventh, because of the underlying circumstances, the petitioner was only concerned with raising and providing for her family. Her family's security and her financial situation were major concerns. Because of her youth, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made few rehabilitative efforts. She has made hardly any restitution. The petitioner has been employed in the casino industry sporadically since 1982. Her performance has been average to poor. She claims she has matured and has accepted responsibility. The petitioner is presently on public assistance and is enrolled in the ACE program in Atlantic County. This program is going to fund a training program in cosmetology for the petitioner which is scheduled to begin February 6, 1989, at the Atlantic County Vocational School. She is a high school graduate. She

enrolled in Atlantic County Community College last fall; however, when she was evicted from her apartment, she lost her books and had to withdraw from school. Her son's father is in jail and does not contribute to his support. She has worked for Eastern Service Workers in the past, is a member of St. Paul's A.M.E. Church, and attends the Faith Baptist Church with her son. She has also sold candy to help support her local little league. The petitioner is presently in debt for approximately $20,000.00. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct.

Given the petitioner's current situation and after considering the above factors, particularly factors one, two, four and eight, I am not convinced that the petitioner has affirmatively established, by clear and convincing evidence, her rehabilitation. The petitioner introduced no letters of recommendation or testimony from other witnesses to attest to her rehabilitation, good character, honesty or integrity. All she submitted was her own testimony and this was after being informed by me at the prehearing conference that she had the burden of proof and needed to produce such evidence. Private counsel also informed her of this. The petitioner has done little to establish her claim of rehabilitation. Therefore, I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Johnson was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the

Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It appears that the petitioner's misconduct was aberrant and that she is normally a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct. The petitioner, however, has not performed admirably within the casino industry during the past six years, nor has she established that she has become a respected member of her community. She is presently unemployed but about to enter a job-training program. In light of her current situation, and her indication that she felt the unemployment benefits were hers, I am not convinced that the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has not earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Ms. Johnson is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

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

DISPOSITION

It is **ORDERED** that the application of Marva M. Johnson for the renewal of a casino employee license be **DENIED.**

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

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

February 7, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2/8-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 10 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

R-1 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated June 26, 1987

R-2a State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, re: Marva M. Johnson, mailed April 2, 1987, for employment at Trump's Castle during benefit year 1986

R-2b State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, re: Marva M. Johnson, mailed April 2, 1987, for employment at Trump's Castle during benefit year 1985.

R-2c State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification and Because of Willful Misrepresentation, re: Marva M. Johnson, mailed April 2, 1987, for employment during benefit year 1986.

R-3a Wage Information Inquiry and Claimant's Benefit Payment and Employment Record for July 28, 1986 to September 14, 1986

R-3b Wage Information Inquiry and Claimant's Benefit Payment and Employment Record for June 3, 1985 to August 17, 1985

R-3c Wage Information Inquiry and Claimant's Benefit Payment and Employment Record for October 17, 1986 to December 6, 1986

R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated March 2, 1987

R-5a State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Marva M. Johnson, as of February 9, 1987, for payment year 1985

R-5b State of New Jesey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Marva M. Johnson, as of February 9, 1987, for payment year 1986 and the beginning of payment year 1987

R-6a State of New Jersey, Department of Labor, Division of Unemployment Disability Insurance Schedule of Overpayments, re: Marva M. Johnson, for claim filed January 20, 1986

R-6b State of New Jersey, Department of Labor, Division of Unemployment Disability Insurance Schedule of Overpayments, re: Marva M. Johnson, for claim filed July 27, 1986

WITNESSES

For the Petitioner:

Marva M. Johnson, the petitioner

For the Respondent:

Marva M. Johnson, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-33
LICENSE NO. 46273-21
OAL DOCKET NO. CCC 6712-88
ORDER NO. 89-16-13

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
SAHDINA JOHNSON LOVELAND

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of April 19, 1989,

IT IS on this 20th day of April 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6712-88

AGENCY DKT. NO. 89-EA-33

SAHDINA L. JOHNSON (LOVELAND)

Petitioner,

v.

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

Respondent.

Sahdina L. Johnson (Loveland), petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: February 3, 1989 Decided: March 8, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), alleges that petitioner, Sahdina L. Johnson, is statutorily disqualified from holding a casino employee license within the meaning of section 86c(1) of the Casino Control Act (Act) N.J.S.A. 5:12-1 et seq. because she committed an offense comparable to theft by deception in violation of N.J.S.A. 2C:20-4. The offense was not prosecuted within the meaning of section 86g of the Act. The Division also alleges that petitioner does not possess the requisite good character, honesty and integrity for casino licensure, pursuant to section 89b(2) of the Act as incorporated within section 90b of the Act. The petitioner asserts rehabilitation pursuant to Section 90h of the Act.

PROCEDURAL HISTORY

The Division filed an objection letter with the Casino Control Commission (Commission) on July 27, 1988, opposing the renewal of petitioner's casino license. The petitioner requested a hearing on August 22, 1988. On August 29, 1988, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 8, 1988 and the matter was scheduled for hearing on February 3, 1989, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was heard and the record closed on February 3, 1989.

ISSUES

A. Whether petitioner committed the disqualifying offense of theft by deception, contrary to N.J.S.A. 2C:20-4, within the meaning of section 86c(1), even if such conduct was not prosecuted under the criminal laws of New Jersey, within the meaning of section 86g?

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

FINDINGS OF FACT

The facts in this matter are totally undisputed.

The petitioner, Sahdina L. Johnson, received a license as a casino employee on June 22, 1983. The license authorized Ms. Johnson to be a craps dealer. Ms. Johnson has been employed by Cesaers Casino Hotel since July 3, 1985, in the position of craps dealer.

On March 19, 1986, the New Jersey Division of Unemployment and Disability Insurance sent a determination and demand for refund of unemployment benefits to Ms. Johnson requiring the refund of unemployment benefits received by Ms. Johnson in the amount of $2,660.00 (Exhibit R-6). Ms. Priscilla Carrano, Investigator, Division of Unemployment and Disability Insurance testified and offered documentary evidence that Ms. Johnson collected unemployment benefits while she was employed by Steel's Fudge between May 26, 1984 and September 15, 1984. The result of petitioner's misrepresentation was the receipt of unemployment benefits to which she was not entitled.

Patrolman Edward T. Brady of the Atlantic City Police Department testified that he arrested the petitioner, Sahdina L. Johnson, on February 8, 1988 and charged her with disorderly conduct in violation of N.J.S.A. 2C:33-2b and resisting arrest, in violation of N.J.S.A. 2C:29-2a. He testified that he and his partner had been called to the Silver Dollar Saloon in Atlantic City, New Jersey. It appears that Ms. Johnson had become loud and abusive. After being asked to leave the premises, Ms. Johnson allegedly refused to leave the bar. She became embroiled in a dispute with the police officers and at which time they charged her. At the municipal court hearing, Ms. Johnson pled guilty to a lesser violation of a municipal ordinance (Exhibit R-11).

In addition, the petitioner defaulted on a student loan with the New Jersey Higher Education Assistance Authority in the amount of $1,171.91. The petitioner has repaid over $1,000.00 of the principal and is making monthly payments of $40.00.

As of July 1988, the petitioner had repaid in excess of $2,000.00 on the principal amount of the unemployment benefits overpayment and as of January 31, 1989, the entire overpayment of unemployment benefits (including interest and penalties) had been repaid to the Division of Unemployment and Disability Insurance. Ms. Johnson acknowledged that her receipt of unemployment benefits while employed at Steel's Fudge was improper. She credibly testified that she has been employed by Caesars Hotel since July 1985 and that there have been no problems with her employment. She further testified that she had been terminated from the Atlantis Casino Hotel as the result of a confrontation with a patron who was demanding change.

Petitioner produced Ms. Doris Johnson (no relation) who testified that she has known

the petitioner for three and one-half years as a fellow craps dealer. Doris Johnson testified credibly that she has observed Sahdina Johnson and she is of the opinion that Ms. Johnson has the requisite good character, honesty and integrity for casino licensure. Petitioner's husband, Darryl A. Loveland also testified as to his wife's reputation for good character, honesty and integrity.

The above is credible, documented, and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which would be under New Jersey law at the time of application be a violation of any of the provisions in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. Section 86g provides that the Commission shall deny a casino license to any applicant who is disqualified "by any act or acts which would constitute any offense under subsection c. . . . even if such conduct has not or may not be prosecuted under the criminal laws of this State."

In the instant matter, the testimony of Priscilla Carrano, Investigator, with the New Jersey Division of Unemployment and Disability along with the documentary evidence and the admissions made by petitioner establish, by a preponderance of the credible evidence, that Ms. Johnson committed an act comparable to theft by deception by collecting unemployment benefits while she was employed by Steel's Fudge between May 26, 1984 and September 15, 1984. Therefore, I **CONCLUDE** that petitioner is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act as incorporated within section 86g.

(B) N.J.S.A. 5:12-89b(2) as incorporated within section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Ms. Johnson is required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1988). In Resorts, the Commission held that an

unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises an objection to licensure under section 89b(2) of the Act, it is incumbent upon the applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In Re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295 (1988). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 297.

The Commission has held that the disqualification criteria found in section 86b cannot be seperated from an applicant's burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

I have had the opportunity to observe the witnesses on behalf of the State, the witnesses on behalf of the petitioner and the petitioner herself. After weighing and assessing the testimony presented, I am satisfied that Ms. Johnson should not be precluded from casino licensure based upon her alleged lack of good character, honesty and integrity. The fact that she has made full restitution, has been successfully employed in the industry for four years and has admitted to her wrongful misconduct persaude me that Ms. Johnson has learned from her mistakes and will continue to be an asset to the casino industry.

Therefore, I CONCLUDE that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed employee in a disciplinary proceeding faced with the

existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating her rehabilitation.

N.J.S.A. 5:12-90h sets forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Ms. Johnson is an applicant for a renewal of her casino employee license as a craps dealer. As such, she will have substantial contact with patrons of casinos.

Second, the Division has established that petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, pursuant to section 86g of the Act. Theft by deception is a statutory disqualifier. Given the circumstances, this was a serious offense.

Third, the respondent acknowledged her misconduct. Under the facts of this case, it is unlikely that the petitioner will ever repeat her criminal behavior.

Fourth, petitioner's behavior between May and September 1984, appears to be aberrational.

Fifth, the petitioner committed the offense at age 22. Under the facts of this case, it is unlikely that her misconduct was due to immaturity.

Sixth, the petitioner's misconduct involved her commission of offenses in 1984. There is no indicia of any other criminal behavior either prior to or subsequent to the events of May to September 1984.

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

Eighth, the petitioner has demonstrated her rehabilitation by clear and convincing evidence. Ms. Johnson has repaid the entire unemployment benefit overpayment of $2,740.00 (including interest and penalties) and has been successfully employed as a craps dealer with Caesars Casino Hotel since July 1985. The fact that Ms. Johnson has led a law-abiding existence since 1984 (with the minor exception of the February 8, 1988 incident) must be given substantial weight when assessing rehabilitation.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including the fact that the petitioner has repaid the entire unemployment overpayment and has been successfully employed in the industry since July 1985 and after assessing the credibility and demeanor of Ms. Johnson and her witnesses, I am persuaded that petitioner has met her statutory burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the petitioner has affirmatively established her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER AND DISPOSITION

It is **ORDERED** that the application of Sahdina L. Johnson for a casino employee license renewal (DGE 46273-21) be **GRANTED.**

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

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

3.6.89
DATE

STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

3/10/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 13 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF WITNESSES

For the petitioner:

Doris Johnson
Darryl A. Loveland
Sahdina L. Johnson (Loveland)

For the respondent:

Patrolman Edward T. Brady, Atlantic City Police Department
Priscilla Carrano, Investigator, New Jersey Division of Unemployment and Disability
Alfred Falco, Agent, Division of Gaming Enforcement

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter from Craig Isaia, Casino Administration Director, Caesars Casino Hotel, dated February 2, 1989
P-2 New Jersey Division of Unemployment and Disability Printout, dated January 30, 1989
P-3 Receipt for Refund of Benefits, dated January 30, 1989

For the respondent:

R-1 Claimant's Benefit Payment and Employment Record, dated October 2, 1985
R-2 Claimant's Benefit Payment and Employment Record, dated October 2, 1985
R-3 Schedule of Overpayment, dated April 10, 1984
R-4 Notice of Hearing, dated November 12, 1985
R-5 Letter from Sahdina L. Johnson, dated November 20, 1985
R-6 Demand for Refund of Overpayments
R-7 Installment Payment Letter, dated March 25, 1986
R-8 Installment Payment Letter, dated November 14, 1986
R-9 New Jersey Division of Unemployment and Disability Printout, dated January 26, 1989
R-10 Copy of Certification found on back of unemployment checks
R-11 Complaint against Sahdina L. Johnson, dated February 8, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-EA-268
OAL DOCKET NO. CCC 4660-88
APPLICATION NO. 7095-21
ORDER NO. 89-13-13

APPLICATION OF STANLEY M. KALLMAN :

FOR A CASINO EMPLOYEE LICENSE :

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) recommending that the application for licensure be granted having been filed with the Casino Control Commission; and exceptions having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of March 29, 1989,

IT IS on this 21st day of April 1989, ORDERED that the initial decision is rejected for the following reasons:

> The Commission finds that the applicant failed to establish by clear and convincing evidence the financial stability, integrity and responsibility and the good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(1) and (2) and -90(b). The question is whether the legitimate concerns of public confidence and trust in the integrity of the regulatory process are served by conferring upon the applicant the privilege of licensure under the Casino Control Act and not, as the ALJ termed it -- "whether the State should protect petitioner [Mr. Kallman] from imprudence." Init. dec. at 3.

The evidence presented by Mr. Kallman consisted of his own testimony and five letters. Three of these letters, purportedly authored by members of Gambler's Anonymous, indicate that Mr. Kallman is an active and contributing member. It is unclear whether these letters were written for the purpose of assisting Mr. Kallman in obtaining a casino employee license, as opposed to employment outside the gaming field. Moreover, as befits the purpose of the organization, the last names of the authors of these letters were not provided. Nevertheless, these letters, coupled with Mr. Kallman's admission and the absence of any evidence to the contrary, establish that Kallman is a compulsive gambler who actively participates in Gambler's Anonymous. That organization as Mr. Kallman also advises, does not condone his action in seeking licensure here, since it is contrary to the policy of avoiding entry into a casino for any purpose.

The other two letters produced by Mr. Kallman are from his State Assemblyman and his State Senator. Both are devoid of any information respecting Mr. Kallman's qualifications for licensure or any other issue involved in this case. The letters are merely requests directed to the Division of Gaming Enforcement that it provide whatever assistance it can to Mr. Kallman regarding his application for licensure.

In his testimony Mr. Kallman admitted that his overwhelming financial problems which have caused him to seek a discharge in bankruptcy stem largely from the fact that he is a compulsive gambler. He has incurred unpaid debts in the amount of $480,000; $100,000 of which are owed to casino licensees and have not as yet been satisfied or discharged. Mr. Kallman testified that,

after the casinos denied him any more credit, he turned to betting on sporting events through bookmakers. In his presentation before this Commission he advised that one is always a "recovering" compulsive gambler. Yet, he stated that he does not have the urge to gamble. He further advised that he has turned his life over to a higher power. Mr. Kallman testified that he was previously employed as a car salesman and a telephone hardware consultant. Mr. Kallman also stated that he is 100% disabled and because of this receives Social Security Disability Benefits.

Mr. Kallman has gambled extensively, and compulsively, in both lawful and illicit venues. As a consequence he has incurred substantial ruinous debt. He is seeking help to control his gambling by his frequent attendance at Gambler's Anonymous meetings, but, as witnessed by his refusal to avoid casinos altogether, he has not embraced the program in its entirety.

The evidence presented by the applicant is not so direct and weighty and convincing as to enable this Commission to come to a clear conviction, without hesitancy, that he meets the exacting standards for a casino employee license. Serious concerns are raised and have not been overcome by the proofs offered by Mr. Kallman. Substantial doubts concerning his application remain, which require the denial of the application. We therefore adopt the ALJ's factual findings, but reject his conclusions that Mr. Kallman established the good character, honesty and integrity and the financial stability, integrity and responsibility required for licensure.

IT IS FURTHER ORDERED that the application of Stanley M. Kallman for a casino employee license is denied because the applicant has failed to establish his qualifications as required by N.J.S.A. 5:12-90b.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4660-88
AGENCY DKT. NO. 88-EA-268

STANLEY M. KALLMAN,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Stanley M. Kallman, petitioner, pro se

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

Record Closed: November 1, 1988 Decided: November 10, 1988

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of petitioner's application for a casino employee license pursuant to N.J.S.A. 5:12-1 et seq. Respondent undertook an investigation and forwarded the matter, without taking a position, to the Casino Control Commission for disposition. The Commission determined to transmit the matter to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., in order to develop a more clear record. A hearing was conducted on November 1, 1988, after which the record closed.

The questions presented are whether petitioner can establish by clear and convincing evidence that he is a person of good character and that he has the financial stability to be licensed as a casino employee. N.J.S.A. 5:12-89b(1)(2) and N.J.S.A. 5:12-90b.

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The only testimony was presented by petitioner and it is undisputed. Petitioner admits that he is a compulsive gambler. Sometime in 1979 he began gambling in Atlantic City. At the time he was a car salesman and was developing his own business as a telephone hardware consultant. He slowly fell into debt and by 1983 he owed the Sands Hotel and Casino approximately $42,000; Resorts — $5,000; Tropicana — $7,500; Atlantis — $4,900; Trump Plaza — $10,000, Bally's Park Place — $10,000, and the Claridge — $15,000. (The exact amounts due are not entirely clear from the record but these amounts are close approximations.) It was at this point that the casinos began to cut off his credit, and he turned to sports betting with bookmakers in an effort to recoup.

In August 1983, petitioner was also involved in an automobile accident, and has not worked since that time. He filed suit and the case went to trial however, he received no award. The Social Security Administration has determined that petitioner is 100 percent disabled, although it appears that this determination is not based on injuries sustained during the car accident, but was granted on a psychiatric basis. These benefits are now his sole source of income. Petitioner testified that although he earned approximately $100,000 in the first half of 1983 before the automobile accident, he has no desire to return to car sales, or consulting, and in any event he has no capital by which to get started.

Petitioner has attended Gamblers Anonymous (GA) since November 1985. He continues to be active in that organization and testified that he has not gambled since he first entered the program. He acknowledged that GA advises program participants not to tempt themselves by going to the casinos; yet he believes that the prohibition on gambling for casino employees and his own change of attitude will prevent a return to his former lifestyle.

In January 1988, he applied for personal bankruptcy seeking to have approximately $480,000 in debts discharged. He seeks to be licensed as a casino host and testified that if granted this license would be a lifeline; with it he might convince the trustee in bankruptcy not to take his house. Petitioner sees a therapist for treatment of depression.

Petitioner also submitted a series of character letters. This is the substance of the record.

The case is a difficult one. Petitioner was a credible individual, he has committed no crime, and personal bankruptcy is not alone a basis for excluding him. Applicants entirely without means are routinely licensed as casino employees, and the position which he seeks is well removed from financial dealings. Having said this, it is apparent that petitioner should not want to work in the casinos. No therapist or representative of GA appeared to say that petitioner could safely return to the atmosphere which not so long ago overwhelmed him. To the contrary, his own testimony is that this is contraindicated. Reduced then to its essence, the question is whether the State should protect petitioner from imprudence. I **CONCLUDE** that it should not. Petitioner is attempting to come back from financial ruin. Once his debts are released, he will have a fresh start. He poses no danger to the casino industry, and we ought not to prevent him from making his own way.

Based on the foregoing, it is my conclusion that petitioner is entitled to a casino employee license, and it is **ORDERED** that his application be approved.

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

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

11/10/88
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

11-14-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 15 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

Stanley M. Kallman

EXHIBIT LIST

P-1 Letter, Bennett to Parrillo, dated June 22, 1988

P-2 Letter, Gagliano to Parrillo, dated April 25, 1988

P-3 Letter, Lou H. to "To Whom It May Concern," dated September 27, 1988

P-4 Letter, Russ R. and Alan M. to "To Whom It May Concern," dated October 2, 1988

P-5 Letter, Zully S. to "To whom it may concern," dated September 23, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-199
OAL DOCKET NO. CCC 5124-88
APPLICATION NO. 70149-22
ORDER NO. 89-7-14

APPLICATION OF RUTH C. KAYTE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the Administrative Law Judge (ALJ) having found that the applicant failed to prove her qualifications for a casino employee license pursuant to N.J.S.A. 5:12-89(b)(2); and the ALJ having filed an initial decision with the Casino Control Commission recommending denial of the application; and exceptions to the initial decision having been filed with the Commission by the Division of Gaming Enforcement which asserted that the applicant's failure to disclose her arrest record provided additional grounds pursuant to N.J.S.A. 5:12-86(b) for denial of the application; and the Commission having considered the entire record of these proceedings at its public meeting of February 15, 1989,

IT IS on this 14th day of March 1989, ORDERED that the ALJ's recommendation to deny the application is rejected for the following reason:

The Commission concurs with the ALJ's finding that the applicant's

failure to disclose her arrest record was unintentional and therefore, no violation of N.J.S.A. 5:12-86(b) was established. However, the applicant having demonstrated her truthfulness by her credible testimony, thereby refuting the only negative information raised as an impediment to her licensure, the applicant was not, in the circumstances of this case, required to introduce testimony of or documentary evidence from other persons to establish her good character, honesty and integrity. While evidence of this nature is sometimes utilized to establish an applicant's good character, it is not a requirement in every case. The Commission finds that, in the absence of any significant negative information, the applicant's employment record, combined with her candid and credible testimony, established the good character, honesty and integrity required for licensure.

IT IS FURTHER ORDERED that the application of Ruth C. Kayte for a casino employee license be granted.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5124-88
AGENCY DKT. NO. 88-EA-199

RUTH C. KAYTE,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Ruth C. Kayte, the petitioner, pro se

Charles Kimmel, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 13, 1988 Decided: December 23, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Ruth C. Kayte, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner is disqualified pursuant to section 86b for failure to disclose material information, and therefore, she lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

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PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so she could be employed as a cleaning person at the Trump Plaza Hotel and Casino. By letter to the Commission, dated February 23, 1988, the Division objected to the application of the petitioner for licensure as a maintenance and cleaning person pursuant to section 86b, alleging that the petitioner failed to disclose material information on her appliclation for licensure regarding a material fact pertaining to the qualification criteria. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on March 14, 1988, and again on June 21, 1988, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated June 29, 1988, which was received by the Commission on July 6, 1988, the petitioner requested a hearing. On July 6, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on July 13, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before Administrative Law Judge Lillard E. Law on September 6, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether the petitioner, with specific reference to her record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to the material facts pertaining to the qualification criteria for her casino employee license within the meaning of section 86b and/or 90e.

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

A hearing was held on December 13, 1988, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On December 29, 1986, the petitioner filed with the Commission a Personal History Disclosure Form — 2A applying for a casino employee license so she could be employed as a cleaning person in the casino industry (R-1). In response to question 16 of this form, the petitioner responded that she had never been arrested or charged with any felony, crime or other offense.

Division Investigator Charles M. Bergman was assigned to investigate the petitioner's application. In addition to reveiwing the petitioner's Personal History Disclosure Form, the agent obtained copies of the petitioner's Federal Bureau of Investigation Criminal History Record (FBI rap sheet), New Jersey State Police, State Bureau of Investigation Criminal History Record, (SBI rap sheet) and Credit Bureau Association Financial Disclosure. The petitioner's FBI and SBI rap sheets indicated that she had been arrested several times for a variety of reasons. Agent Bergman then obtained copies of various police reports or court records which substantiated the entries on the rap sheets.

On December 21, 1987, Agent Bergman contacted the petitioner by telephone. He read the petitioner question 16 two times. Both times she indicated that she understood the question and that she had never been arrested. Question 16 asks:

> For the purpose of this question the word "arrest" includes any detaining, holding, or taking into custody of 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 county: The word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations.
>
> Have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?

Agent Bergman then read the question to the petitioner a third time, at which point she admitted that she had been arrested as a juvenile for being a "wayward kid."

On June 19, 1946, the petitioner was arrested for violation of parole by the Sheriff's Office in Buffalo, New York. On June 26, 1946, the applicant was sent to the Westfield State Farm, Bedford Hills, New York, for a parole violation - wayward minor (R-2). The petitioner stated that she was arrested as a juvenile for being wayward and that she kept running away, even after being placed on probation. The petitioner further stated that she did not disclose the arrest because she had forgetten about it.

Agent Bergman then confronted the petitioner with the next arrest listed on her FBI rap sheet. On February 21, 1962, the petitioner was arrested in New York City and charged with Grand Larceny (diamond ring) (R-2 & R-3). On March 20, 1962, the case was dismissed in court (R-3). Division investigation was unable to locate any additional records with regard to this arrest. When questioned about the arrest during her interview, the petitioner stated that she had no knowledge of the arrest and, therefore, could not disclose the same. The FBI rap sheet and the State of New York Division of Criminal Justice rap sheet identifies the accused in this arrest as being Barbara Cooper (R-2 and R-3). These documents indicate that Barbara Cooper was an alias used by the petitioner and identification of the petitioner as Barbara Cooper was made by reference to fingerprints.

Detective Bergman then questioned the petitioner regarding the next arrest listed on her FBI rap sheet. On December 26, 1983, the petitioner was arrested by the New York Police Department and charged with Possession of Gambling Records - second degree (similar to N.J.S.A. 2C:37-3), Promoting Gambling — second degree (similar to N.J.S.A. 2C:37-2) and Loitering - Remaining in a Public Place - Gambling (similar to N.J.S.A. 2C:33-2) (R-2 and R-3). Division investigation disclosed that the case was not documented and there was no disposition (R-3). The petitioner only admitted to the arrest after being confronted with her criminal record sheet. She stated that she was in a house making a numbers play, the house was raided by the police and everyone in the house was arrested and taken into custody. The petitioner stated that she was just a player. She also stated that it happened a long time ago and that she just forgot about it.

Agent Bergman then questioned the peititoner regarding the next arrest listed on her FBI rap sheet. On January 17, 1986, the petitioner was arrested by the New Jersey State Police for Theft of Property which was Lost or Mislaid, N.J.S.A. 2C:20-6, as a result of a criminal complaint filed by the victim who was a patron at the Trump Plaza Hotel and Casino (R-2, R-4 and R-5). At the time in question, the petitioner was working as a cleaning person in a ladies room when the victim came in and set down a money clip

containing $300. The victim then left the ladies room forgetting that she had set down the $300 and, when she returned, the money was missing. The victim stated that the petitioner was one of the occupants of the ladies room when the victim had placed her money on the shelf. As a result, the victim signed the criminal complaint against the petitioner. The petitioner told the Trump Plaza Security Officer that there was also another casino employee as well as a patron in the restroom when the victim alleged that her money was taken and she denied taking the money (R-4). On March 5, 1986, the Casino Prosecutions Section administratively dismissed the case against the petitioner (R-5). The petitioner failed to disclose this arrest and continued to fail to disclose until such time as the facts leading up to the arrest were read to the petitioner by the Division investigator from the investigation report. At that time, the petitioner did admit to the arrest and stated that she was taken into investigation because a patron accused her of taking $300 from the ladies room. The petitioner again denied the theft stating the charges against her were dismissed and that the money on her person was returned to her. The petitioner stated she did not disclose this arrest because it happened in the casino and she did not understand what the question meant.

After Agent Bergman discussed the arrest of the petitioner during the course of her employment at Trump Plaza as previously noted, the petitioner was again asked if she had any other arrests which she failed to disclose. The petitioner stated she was arrested a long time ago in New York for playing the numbers. At this point in time, Agent Bergman then read to the petitioner the fact that she was arrested on March 24, 1986, by the Atlantic City Police Department and charged with Shoplifting (N.J.S.A. 2C:20-11) of a $4.19 box of Nuprin from the Rite-Aid Drug Store in Atlantic City (R-2 and R-6). On April 3, 1986, the petitioner pled guilty in the Atlantic City Municipal Court and was fined $25, $25 court costs and $30 to the Violent Crimes Compensation Board (R-7). At this juncture, the petitioner did admit to being arrested, stating that she did take the box of Nuprin and had entered a guilty plea. She further stated that she did not disclose the arrest because she though Question #16 and the instructions thereto meant that she only had to disclose if she had gone to jail.

The petitioner testified that the reason that she did not disclose her arrests on the Personal History Disclosure Form - 2A (R-1) was that she had never been sent to jail so she thought she did not have to disclose the arrests. The petitioner indicated that she had previously completed a nursing school application which asked her to disclose her arrest record. When she questioned whether or not she should include her arrest, she was

told that she did not have to disclose any arrests for which she had not been convicted and served a jail sentence. When she completed R-1, the petitioner believed "that it was all the same" and that she did not have to disclose the arrests if she did not serve a jail sentence for the arrest. The petitioner did not fear that she would be denied a license if she disclosed her arrests. She thought that she had completed the form correctly.

The petitioner was born on May 22, 1926 in Buffalo, New York. She has received no education past the eighth grade. The petitioner worked in defense plants in the 1940's. When she ran away from home in 1946, she was sent to a reform school. In the 1950's she worked in restaurants in New York. In 1963, the petitioner moved to Virginia and worked in the pantry of the Williamsburg Inn for five years. In 1968, the petitioner moved to Atlantic City. She worked as a chambermaid in various hotels until 1978. In 1969, she received the best maid in Atlantic City award. In 1978, the petitioner became employed as a cleaning person at Resorts International Hotel and Casino. She worked there for four years. In 1983 and 1984, the petitioner was unemployed. Since 1985, the petitioner had been employed as a cleaning person at the Trump Plaza Hotel and Casino. The petitioner has received no disciplinary actions arising out of her employment. The petitioner is single, lives alone, and has two grown sons. She contributes to the United Way and occasionally attends church.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying her completion of her Personal History Disclosure Form - 2A and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described the underlying circumstances of her failure to complete question 16. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

FINDINGS OF FACT

1. On January 6, 1987, the petitioner filed an application for licensure as a casino employee so she could be employed as a cleaning person in the casino industry.

2. On this application, she indicated that she had never been arrested.

3. On June 19, 1946, the petitioner was arrested in Buffalo, New York for violation of parole. The petitioner forgot about this arrest.

4. On June 26, 1946, the petitioner was arrested as a wayward minor. The petitioner forgot about this arrest.

5. On February 21, 1962, the petitioner was arrested in New York City for grand larceny. This case was dismissed. The petitioner stated she had no knowledge of the arrest.

6. On December 26, 1973, the petitioner was arrested in New York and was charged with various gambling offenses. There was no disposition of these charges. The petitioner forgot about this arrest.

7. On January 17, 1986, the petitioner was arrested for theft of lost or mislaid property in a casino. The charge was administratively dismissed. The petitioner thought that since this occurred in a casino that it was not an arrest and she did not understand the question.

8. On March 24, 1986, the petitioner was arrested in Atlantic City and was charged with shoplifting a box of Nuprin valued at $4.19. The petitioner was convicted of this offense. She failed to disclose this offense as she had not received a jail sentence.

9. The petitioner believed that she did not have to disclose arrests if they did not result in a jail sentence. She did not fear that she would be denied a license if she disclosed her arrests. She thought she completed the application correctly.

10. The petitioner is 52 years of age, single, lives alone, has two grown sons, and has no education beyond the eighth grade. She has worked most of her life in restaurants or as a maid in hotels. She was cited as the best maid in Atlantic City in 1969.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;

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

> ....
>
> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> ....

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(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act [footnote omitted] and any additional residency requirement imposed under

> subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> . . . .
>
> e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act [footnote omitted].

DISCUSSION OF LAW AND CONCLUSIONS

The Division contends that the petitioner's nondisclosure on her Personal History Disclosure Form-2A constitutes a violation of N.J.S.A. 5:12-86b, and that, accordingly, she is disqualified from licensure.

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of the Application of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at pages 15-16 of its Final Decision:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b)

> and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission, 78-EA-8 (Jan. 30, 1980) Final Order at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, Final Decision at 16; In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), affirmed, Casino Control Commission (Jan. 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (Sept. 5, 1980). For a nondisclosure to result in a disqualification it must have been committed intentionally or in disregard of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 at 253 (1979).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 91 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

In this case, the Division accepts the petitioner's assertion that the first four arrests were so old that she merely forgot about them. The Division only contests the petitioner's failure to disclose her last two arrests. Rightly or wrongly, the petitioner believed that she did not have to disclose arrests which did not result in the imposition of a jail sentence. She did not believe that her disclosure of her arrests would adversely

affect her application for licensure. She believed that she was completing the application correctly. The petitioner's nondisclosure was not intentional or in disregard to the regulatory process.

Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the petitioner committed a violation of N.J.S.A. 5:12-86b, which disqualifies her from licensure.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Kayte was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, 79-CL-1 Casino Control Commission (February 26, 1979) Opinion at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 80-CL-1 Casino Control Commission (November 13, 1980) Opinion at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

While the petitioner has been employed in the casino industry for eight years, she introduced very little evidence to establish her good character, honesty and integrity. She has an arrest record of eight arrests spanning over 42 years; however, she has only one conviction for shoplifting a $4.19 box of Nuprin in 1986. Her other arrest in 1986 did involve her employment in the casino industry; however, that change was administratively dismissed. She has worked in restaurants and as a maid in hotels for most of her adult life. The petitioner did not introduce any letters of recommendation or any character

testimony from any witnesses. She testified very briefly concerning her character. The petitioner has the burden of establishing her good character, honesty and integrity by clear and convincing evidence, yet she has failed to do so. An examination of the whole person and the scant evidence submitted in the record does not clearly and convincingly establish that Ms. Kayte is a person of good character, honesty and integrity, and that she is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

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

DISPOSITION

It is **ORDERED** that the application of Ruth C. Kayte for issuance of a casino employee license be **DENIED.**

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

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

December 23, 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1-4-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 5 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

R-1 Personal History Disclosure Form - 2A, filed December 29, 1986
R-2 Federal Bureau of Investigation Criminal History Record Disclosure
R-3 State of New York, Division of Criminal Justice Criminal History
R-4 New Jersey State Police Investigation Report, dated January 17, 1986
R-5 New Jersey State Police Arrest Report, dated January 24, 1986
R-6 Atlantic City Police Department Investigation Report, dated March 24, 1986
R-7 Atlantic City Police Department Arrest Report, dated March 24, 1986

WITNESSES

FOR THE PETITIONER:

Ruth C. Kayte, the petitioner

FOR THE RESPONDENT:

Agent Charles M. Bergman, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-15
OAL DOCKET NO. CCC 5502-87
REGISTRATION NO. 65781-40
ORDER NO. 88-7-14

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
CARLOS B. LUMBRE,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 8th day of February 1989, ORDERED that the initial decision is modified as follows:

> The Commission cannot adopt the ALJ's conclusion that respondent's conduct was not an automatic disqualifier under N.J.S.A. 5:12-86(c) for these reasons: (1) the ALJ failed to consider whether respondent's conduct amounted to complicity (N.J.S.A. 2C:2-6) in the distribution of cocaine; (2) the Commission disagrees with the ALJ's finding that the ex post facto clauses of the State and federal constitutions prohibited the application of N.J.S.A. 2C:35-5 to respondent's conduct in this administrative

proceeding; and (3) the ALJ compared the penalty provisions of the pertinent federal and State offenses instead of on the elements of those offenses; and

Although a remand would normally be required to resolve these matters, the record reveals a showing of rehabilitation on the part of respondent, as thoroughly developed in the initial decision's analysis of whether respondent's conduct was inimical; and

Even if the Commission were ultimately to find that respondent should be disqualified under N.J.S.A. 5:12-86(c), the record supports a finding that he has been rehabilitated by clear and convincing evidence, pursuant to N.J.S.A. 5:12-91(d); and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5502-87
AGENCY DKT. NO. 88-15

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND,
PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
CARLOS B. LUMBRE,
Respondent.

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

Carlos B. Lumbre, respondent, pro se

Record Closed: December 14, 1987 Decided: December 24, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Carlos B. Lumbre's casino hotel employee registration no. 65781-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had committed a disqualifying offense under section 86c(1), by means of section 86g, and that the respondent had been convicted

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of a criminal offense which rendered continued registration to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4). The respondent contended that he was rehabilitated, pursuant to section 91d, that his actions were not inimical to the policies of the Act and were not of sufficient degree to warrant revocation of his registration.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission. By complaint to the Commission, filed July 22, 1987, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of using a communication facility (telephone) in facilitating the knowing and intentional distribution of a controlled dangerous substance (cocaine) and Principals, which are disqualifying offenses under section 86c(4). Based upon the complaint, the Commission notified the respondent on July 24, 1987, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated August 5, 1987, which was received by the Commission on August 5, 1987, the respondent requested a hearing. On August 10, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on August 13, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Stephen W. Thompson on September 25, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued casino hotel employee registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4), because he is alleged to have committed a violation of 21 U.S.C. § 843(b), which is comparable to N.J.S.A. 2C:35-5.

B. Whether respondent's continued casino hotel employee registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4), because he is alleged to have committed a violation of N.J.S.A. 2C:5-2, conspiracy to distribute a controlled dangerous substance despite the fact that such acts were not prosecuted in the criminal courts of this States as permitted by N.J.S.A. 5:12-86g.

A hearing was held on September 14, 1987, in the Municipal Courtroom, Hammonton, Hammonton Municipal Building, Hammonton, New Jersey, after which the record closed.

In addition to the above two issues, the Division sought to establish that the conduct of the respondent was also a statutory disqualifier pursuant to section 86c(1), which if established, would also raise the issue of the respondent's rehabilitation pursuant to section 91d.

THE FACTS

The respondent, Carlos B. Lumbre, is a Peruvian citizen who speaks little English. In August 1985, the respondent emigrated to the United States with his first wife as his wife's family was already living in the United States. After being in the United States for only two weeks, the respondent began having marital problems. At this time, he met his brother-in-law, Jairo Alzate, who was married to the respondent's wife's sister. The respondent's marital problems continued until he and his wife separated in March 1986, when the respondent wife's parents evicted him from their house.

The respondent had no family in the United States, few friends, and could not speak English. He was confused and did not know what to do. At this point Jairo Alzate offered to help the respondent. In April 1986, Mr. Alzate offered the respondent the use of an apartment. The only condition on the use of the apartment was that Mr. Alzate would occasionaly store some packages in the closet which the respondent were never to touch. Because he was in a strange country without a place to live, the respondent accepted Mr. Alzate's offer.

At the hearing, the respondent testified that he did not know how Mr. Alzate was employed. Mr. Alzate had told the respondent that he worked but had never told the respondent what he did. He testified that he did not know Mr. Alzate was involved in dealing drugs. In a prior statement given to Drug Enforcement Administration (DEA) agents; however, the respondent indicated that he knew Mr. Alzate was a cocaine dealer based on past experience (P-1).

On April 29, 1986, Mr. Alzate telephoned the respondent and asked the respondent to accompany him to New York. The respondent agreed to go. Later on April 29, 1986, Mr. Alzate took two packages to the respondent's apartment and asked the respondent to keep them for him. Mr. Alzate also informed the respondent that he would explain the trip to New York the next day.

On April 30, 1986, Mr. Alzate telephoned the respondent in order to make arrangements to pick him up to go to New York. It was during this conversation that respondent became aware for the first time that the purpose of their trip was to pick up cocaine. Mr. Alzate picked up the respondent at his place of work at approximately 7:30 a.m. (P-1). While on the way to New York, Mr. Alzate made it clear to the respondent that the purpose of the trip was to pick up drugs. The respondent told Mr. Alzate, "You have helped me in the past, but when we go back, I don't want anything to do with you."

The two arrived in New York at approximately 11:30 a.m. They parked in a Dunkin' Donuts parking lot. Mr. Alzate departed the area, and the respondent entered Dunkin' Donuts to eat. Mr. Alzate returned at approximately 1:30 p.m., carrying a small package in a shopping bag which he placed in the trunk of the car. The two men then returned to New Jersey (P-1). During the return trip, the respondent again told Mr. Alzate that he did not want anything further to do with him.

At approximately 4:30 p.m. the two men returned to Mr. Alzate's apartment in Pleasantville, which was under surveillance by DEA agents. Shortly thereafter, Mr. Alzate departed with the packages (P-1). Mr. Alzate then attempted to sell the package containing one kilogram of cocaine to special agents of the DEA in Cardiff, New Jersey. Mr. Alzate was arrested at that time (P-1). The DEA agents returned to Mr. Alzate's apartment. The respondent was taken into custody and the respondent then fully cooperated with the DEA agents. The respondent consented to a search of his residence so the DEA agents could obtain the two packages which had been left there by Mr. Alzate the previous day (P-1).

The respondent was then transported to his residence. During the course of the search of the respondent's residence, the DEA agents obtained a black briefcase and a brown zipper bag. The briefcase contained plastic zip-lock bags, one of which contained a white powder substance that field-tested positive for cocaine (P-2). The brown zipper bag

contained an Ohaus triple beam scale (P-2). These items were identified by the respondent as belonging to Mr. Alzate (P-2). The respondent testified that he did not know what was inside the two packages until the DEA agents opened them.

The respondent was indicted in United States District Court for the District of New Jersey Indictment No. 86-188 for one count of Attempt and Conspiracy to Distribute a Controlled Dangeorus Substance (Cocaine), contrary to 21 U.S.C. § 846 comparable to N.J.S.A. 24:21-24, and two counts of Distribution of a Controlled Dangeorus Substance (Cocaine), contrary to 21 U.S.C. § 841(a)(1), comparable to N.J.S.A. 24:21-19(a)(1) and Principals, contrary to 18 U.S.C. § 2, comparable to N.J.S.A. 2C:2-6b(3) (P-4 and P-7). On June 19, 1986, a Superseding Information was filed against the respondent for two counts of Prohibited Acts C, "Using a Communication Facility (telephone) In Facilitating the Knowing and Intentional Distribution of a Controlled Dangerorus Substance" (cocaine), contrary to 21 U.S.C. § 843(b), comparable to N.J.S.A. 24:21-24 and Principals, contrary to 18 U.S.C. § 2, comparable to N.J.S.A. 2C:6b(3) (P-5 and P-8). On June 19, 1986, the respondent pleaded guilty to the Superseding Information (P-5). The charges under the Indictment were dismissed at the respondent's sentencing hearing. The respondent appeared for the sentencing hearing on July 30, 1986, and on August 15, 1986 the Honorable Anne E. Thompson, U.S. District Court Judge, sentenced the respondent to serve three years imprisonment for count one of the information and four years imprisonment for count two of the information. Both sentences were suspended and the respondent was placed on probation for a period of five years on both counts, and the sentences were ordered to run concurrently. The respondent was also ordered to pay $1,000.00 fine and $100.00 Violent Crimes Compensation Board penalty (P-6 and P-9). At the sentencing hearing, Judge Thompson recommended that the respondent be permitted to retain his casino hotel employee registration.

Carlos B. Lumbre (y Condor) is currently 30 years old and was 28 years old at the time of the offense. He was born in Lima, Peru, and he graduated our equivalent of high school in Peru. As indicated above, he came to the United States in August 1985, because his then wife's family had previously immigrated to the United States. He divorced his first wife, but has remarried, and he and his present wife are expecting their first child.

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The respondent first became employed in the United States on January 18, 1986. He became employed as a steward at Harrah's Marina Hotel and Casino. He remained in that position until August 2, 1987. On August 3, 1987, the petitioner became a buffet dining room attendant at Harrah's, and he continues to be employed in that position. The respondent transferred between positions because his current job is a better job, a cleaner job, and he perceives it as a career betterment opportunity.

The respondent is enrolled in the "English as a second language" program at Atlantic Community College. He is a member of the International Club at Atlantic Community College. He regularly attends church and participates in church events and church-sponsored charitable campaigns.

The respondent indicated that he is trying to rehabilitate himself. He admits that his actions of April 30, 1986, in accompanying Mr. Alzate to New York after learning that Mr. Alzate was a drug dealer and that the purpose of the trip was to obtain drugs for distribution was wrong. He is remorseful and feels sorry for his actions.

Sonia M. Santiago, president of Para-Plus Translating Inc., testified on behalf of the respondent. She has known the respondent since the date of his arrest because she served as the respondent's court-appointed translator. She has spoken with the respondent's supervisors, who indicate that the respondent is always on time, courteous, a good employee, and is being considered for promotion. With regards to his schooling, he regularly attends class, seeks special assistance, and is trying to better himself. It is Ms. Santiago's opinion that the respondent is trying very hard. He admits his mistakes and he wants to be part of his community. Ms. Santiago believes the respondent is a person who can be trusted and who can be a productive member of society.

The respondent submitted ten letters into evidence. The first, written by Jerome Robinson, buffet restaurant manager, dated December 14, 1987, indicates:

> As the Restaurant Manager of Harrah's Buffet, I directly supervise Mr. Carlos Lumbre in his normal job functions.
>
> Mr. Lumbre has, to the present date, demonstrated an amicable persona. Carlos' job function requires interaction with our clientele, as well as a sizeable peer group and several supervisors. Carlos has maintained a poised and well-mannered presentation with guests and peers. Carlos displays a deeply rooted and well appreciated respect for authority in his interaction with our team of supervisors.

> On the strength of these observations, Carlos can be said to be an asset to our operation. Carlos' ability to maintain his present level of acceptance may lead to future promotianal [sic] opportunities. [R-1]

Reverand Ronald S. Falotico, pastor, Church of the Holy Spirit, in a letter dated November 25, 1987, writes:

> Mr. Carlos Lumbre along with his wife Olga Flores...are members in good standing of Holy Spirit Parish. Carlos seems to be a good worker and sincere in becoming a good family man. He is courteous and respected by both the Hispanic as well as the English speaking community. I am sure he would be a positive asset to your service of employ. [R-2]

In a letter dated July 29, 1986, which was submitted at the time of sentencing to Judge Thompson, Assistant U.S. Attorney Joel B. Rosen wrote about respondent's character (identifying him as Carlos B. Lumbre y Condor):

> Pursuant to a plea agreement entered into between this Office and Mr. [Lumbre] let this letter indicate the nature and extent of Mr. [Lumbre's] cooperation with the United States. Immediately upon his arrest, Mr. [Lumbre] commenced cooperating with Federal authorities. Specifically he indicated what his role was, as well as the involvement of the codefendant Alzate-Patino with regard to the distribution of cocaine. Since Mr. Alzate-Patino pled guilty, Mr. [Lumbre's] testimony was not necessary. However, he was willing and available to testify should that have become necessary. In short, the United States was totally satisfied with Mr. [Lumbre's] cooperation.
>
> Additionally, with regard to the other defendant in this case, Mr. [Lumbre's] role was extremely limited. There is no evidence that Mr. [Lumbre] made any money from the sale of cocaine. Rather, the only evidence that the United States has in regard to Mr. [Lumbre] was that he permitted the defendant Alzate-Patino to utilize his apartment to store drugs. To our knowledge, [Lumbre] was not in any way connected with the sale or distribution of these drugs. [R-3]

In a letter dated November 1987, the respondent's immediate supervisor at Harrah's, Linda Figueroa, wrote:

> Carlos Lumbre has been working in the buffet for about three months. I feel he could not have started at a better time. The summer is our busiest season and Carlos is a great asset. His work is exceptional. He works very hard and does very well. Carlos is

always available to work overtime for us, even at last minute notice. He has a good attendance record and he works well with the other employees.

As Carlos' direct supervisor, I feel confident the work will be done when Carlos is here. [R-6]

In a letter dated November 9, 1987, Dominick Carides, steward supervisor, wrote:

This is to inform that Carlos worked under my supervision for five months; in that period of time Carlos' behavior was excellent, he never mist [sic] a day in those five months. He always had a good rapport with his fellow co-workers. He did what he as asked to do according to our job expectation. [R-7]

In a letter dated November 9, 1987, Domenic F. Berducci, assistant professor of English as a second language, Atlantic Community College, wrote:

I have known Mr. Carlos Lumbre for about one year now both as my student in English class and outside of the classroom. He has worked hard in class and has proven himself to be very responsible. His class attendance record was excellent. As I look at my records from the past I notice he was fifth in class attendance and punctuality out of a class of 23. Also in the past year I have come to know Carlos is social situations, usually at lunch in the college cafeteria and judge him to be of fine character.

I would recommend that the Casino Gaming Commission allow Carlos to retain his license. [R-8]

In a letter dated November 5, 1986, Luis A. Tavarez, director of financial aid, Atlantic Community College, wrote:

Carlos Lumbre has been a student at Atlantic Community College (ACC) since the fall of 1985. He has been studying English as a second language. To the best of my knowledge he has been doing well.

I have known Carlos since he entered ACC. Our relationship has been one at a professional level. It has been my observation that Mr. Lumbre is a humble person and nothing short of a gentleman. He shows dedication to his school work, as he is diligently trying to better himself by studying. [R-9]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the respondent testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:
>
> (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice," P.L. 1978, C. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> all crimes of the first degree;
>
> ....
>
> (3) any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-9) or

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(4) any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automoatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing and provided, further however, that, any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant or person demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for disqualification pursuant to paragraph (1) of this section.

....

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

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for a casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his . . . registration." The Division contends that the respondent's criminal misconduct constitutes a disqualifying offense under either section 86c(1), by means of section 86g, or section 86c(4) and, therefore, he cannot continue to hold a registration.

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

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

The Division first contends that the respondent's conviction for two counts of Prohibited Acts C, "Using a Communication Facility (telephone) in Facilitating the Knowing and Intentional Distribution of a Controlled Dangerous Substance" (cocaine) contrary to 21 U.S.C. § 843(b), is comparable to N.J.S.A. 2C:35-5. The Division asserts that pursuant to N.J.S.A. 2C:35-5, the offense in this case would be one of the first degree, and therefore would be a statutory disqualifier pursuant to section 86c(1).

21 U.S.C. § 843 provides in pertinent part:

§ 843 Prohibited Acts C

Communication Facility

> (b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

21 U.S.C. § 843(c) provides that "any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both . . ."

N.J.S.A. 2C:35-5, Manufacturing, Distributing or Dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> (2) To create, distribute, or possess or have under his control with intent to distribute, a counterfiet controlled dangerous substance.
>
> b. Any person who violates subsection a. with respect to:
>
> (1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, . . . in a quantity of five ounces or more including any adulterants or dilutants, provided there are included at least 3.5 grams of the pure free base durg, is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, a fine of up to $300,000.00 may be imposed;...

A crime of the first degree is punishable by ordinary term of 10-20 years with a presumptive term of 15 years and an extended term of 20 years to life.[1] A fine up to $100,000.00 may also be imposed. See N.J.S.A. 2C:43-3, N.J.S.A. 2C:43-6, N.J.S.A. 2C:43-7, N.J.S.A. 2C:44-1f(1).

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[1] The presumptive term is the term of imprisonment to be imposed unless a preponderance of the aggravating factors or a preponderance of the mitigating factors weigh in favor of higher or lower terms. See, N.J.S.A. 2C:44-1f(1).

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21 U.S.C. § 841, Prohibited Acts A, provides in pertinent part:

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both.[2] If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both.[2] Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

Based upon the above statutory language, I **CONCLUDE** that 21 U.S.C. § 843 (b) is not substantially similar to N.J.S.A. 2C:35-5. N.J.S.A. 2C:35-5 is not only substantially similar to, but is almost word for word identical to 21 U.S.C. § 841. Not only are the

[2] Cocaine is a schedule II narcotic drug. See, 21 U.S.C. § 802 (16) and 21 U.S.C. § 812, Schedule II.

offenses identical, but the sentences which may be imposed for a violation of N.J.S.A. 2C:35-5 or 21 U.S.C. § 841 are identical (using the Title 2C presumptive sentence). An offense committed in violation of 21 U.S.C. § 843 (b) is a substantially lesser offense than an offense committed under either 21 U.S.C. § 841 or N.J.S.A. 2C:35-5. The maximum term of imprisonment which may be imposed for a violation of 21 U.S.C. § 843(b) is only a term of four years. A term of four years is the presumptive term for a crime of the third degree in New Jersey. See, N.J.S.A. 2C:44-1f(1). A violation of 21 U.S.C. § 843(b) would thus be equivalent of committing a crime of the third degree in New Jersey, not a crime of the first degree.

In addition, I believe it is incorrect to equate the respondent's conduct to the conduct prohibited by N.J.S.A. 2C:35-5. N.J.S.A. 2C:35-5 was enacted as part of the Comprehensive Drug Reform Act of 1986, P.L. 1987, c. 106 (C. 2C:35-1 et seq.). Section 26 of this act provides, "(T)his act shall take effect on the 60th day following enactment but shall remain inoperative until the enactment into law of Assembly Bill No. 3209 of 1986." The Comprehensive Drug Control Act of 1986 was signed into law by the governor on April 23, 1987. Assembly Bill No. 3209 was a bond act authorizing a $198,000,000 bond issue to finance prison construction. The Legislature wanted to ensure that the new drug law would not go into effect unless funds were approved to provide increased prison space to accommodate prisoners who would receive longer sentences under the new law for the commission of drug offenses than they would have received under the prior law. Assembly Bill No.3209 was substituted by Senate Bill No. 2555 on May 18, 1987. Senate Bill No. 2555 passed both houses of the Legislature. Governor Kean enacted Senate Bill No. 2555 into law on July 9, 1987, P.L. 1987, c. 178. All of the alleged offenses in this case were committed prior to July 9, 1987. Thus, to apply the provisions of and the gradation of N.J.S.A. 2C:35-5 to the alleged offenses in this case would be violative of the Ex Post Facto Clauses of both the federal and state constitutions. See, N.J. Const. Act 4, sec. 7, para. 3; Lindsley v. Board of Managers, 107 N.J.L. 51 (1930), affirmed 108 N.J.L. 415.

The Division next asserted that the alleged conspiracy committed in violation of N.J.S.A. 2C:5-2 was a section 86c(1) statutory disqualifier on the theory that the alleged conspiracy was to commit an offense in violation of N.J.S.A. 2C:35-5, which was listed as a statutory disqualifier in section 86c(1) and was a crime of the first degree. As I have already concluded that the offense committed was not a crime of the first degree, and also that N.J.S.A. 2C:35-5 was inapplicable to the facts in this case, I CONCLUDE that the alleged conspiracy was not a crime of the first degree.

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Accordingly, I **CONCLUDE** that the Division has not established, by a preponderance of the credible evidence, that the offenses committed by the respondent are disqualifying offenses under section 86c(1).

(B) N.J.S.A. 5:12-86c(3)

While not raised at the hearing, in light of the above discussion of N.J.S.A. 5:12-86c(1), I feel it is necessary to comment on a possible violation of section 86c (3). Section 86c(3) provides a statutory disqualifier for "any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19)." N.J.S.A. 24:21-19 is the predecessor statute of N.J.S.A. 2C:35-5. It is the drug law that was in effect at the time the alleged offenses were committed in this case and is the proper statute to consider in determining whether or not the respondent's crimes were equivalent to or comparable to a statutory disqualifier.

N.J.S.A. 24:21-19 provides in pertinent part:

> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense, a controlled dangerous substance; or
>
> (2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.
>
> b. Any person who violates subsection a. with respect to:
>
> (1) A substance . . . in a quantity of 1 ounce or more with there being included less than 3.5 grams of the pure free base Schedule I or II narcotic drug, is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 12 years, a fine of not more than $25,000.00, or both; or:
>
> (2) A substance, in a quantity of one ounce or more including any adulterants or dilutants, classified in Schedules I or II which is a narcotic drug, provided that there are included a least 3.5 grams of the pure free base Schedule I or II narcotic drug, is guilty of a high misdemeanor and shall be punished by imprisonment for up to life, a fine of not more than $25,000.00, or both...

The offense prohibited in N.J.S.A. 24:21-19 is substantially identical to the offense prohibited in both N.J.S.A. 2C:35-5 and 21 U.S.C. § 841. The penalty which could have been imposed for a violation of N.J.S.A. 24:21-19 in this case could have been life imprisonment. For the same reasons that I concluded above that an offense committed under 21 U.S.C. § 843(b) is not comparable to an offense committed under N.J.S.A. 2C:35-5, I **CONCLUDE** that an offense committed unter 21 U.S.C. § 843(b) is not comparable to an offense commited under N.J.S.A. 24:21-19.

Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the offenses committed by the respondent are disqualifying offenses under section 86c(3).

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

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimcal clause. More specifically N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends

upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division established that the respondent was convicted of using a communication facility (telephone) in facilitating the knowing and intentional distribution of a controlled dangerous substance and for being a principal. Although the respondent's convictions for using a communication facility (telephone) in facilitating the knowing and intentional distribution of a controlled dangerous substance and for being a principal are not listed as disqualifiers under section 86c, such conduct, when committed by a registrant, raises serious concerns. Normally, a conviction for a drug offense involving the distribution of cocaine would render continued registration to be inimical to the Act. The court conviction, along with the documentary evidence submitted by the Division, establishes the charged misconduct; however, the circumstances surrounding the offense substantially mitigate the seriousness of the offense.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. NO. CCC 3933-86, decided by the Commission, (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualaification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof) had shifted."

> In the Davis case, the Commission stated at 313, 314:
>
> Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitation provisions apply only to '...a conviction of any of the offenses enumerated in this act as disqualification criteria.' Nevertheless, many of the factors that are considered upon a claim of rehabilitation are included within the inimical analysis.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> The salient point to be made here is that we consider rehabiltation factors before concluding that the offense in question is or is not inimical under section 86(c)(4). Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4). [Id. at 314.] [Footnote omitted.]

The eight specific criteria enumerated in N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

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

First, Mr. Lumbre is a casino hotel registrant and is employed as a buffet dining room attendant in a restaurant at Harrah's. As such, he does not have direct reponsibilities for actual gaming activities and has minimal contact with casino patrons.

Second, the respondent committed violations of 21 U.S.C. § 843(b), using a communication facility (telephone) in facilitating the knowing and intentional distribution of a controlled dangerous substance (cocaine). The distribution of cocaine is an extremely serious offense; however, the offense which the respondent was convicted of, while serious, is a less serious offense.

Third, the circumstances surrounding the offense substantially mitigate the seriousness of the offense. While accompanying his brother-in-law to New York, the respondent affirmatively learned that the purpose of their trip was to purchase cocaine. The respondent immediately repudiated the action and indicated that upon their return to New Jersey, he did not want anything further to do with his brother-inlaw. The respondent did not participate in the purchase of the sale of the drugs and was not present at either transaction. As stated by the assistant United States attorney who prosecuted this case:

> [W]ith regard to the other defendants in this case, Mr. [Lumbre's] role was extremely limited. There is no evidence that Mr. [Lumbre] made any money from the sale of cocaine. Rather, the only evidence that the United States has in regard to Mr. Condor [Lumbre] was that he permitted the defendant Alzate-Patino to utilize his apartment to store drugs. To our knowledge, [Lumbre] was not in any way connected with the sale or distribution of these drugs (R-3).

Fourth, the respondent's misconduct occurred on April 29 and 30, 1986, approximately one and one-half years ago.

Fifth, the respondent was 28 years of age at the time of the offense. I do not believe that his age at the time of the offense was a contributing or mitigating factor in this case.

Sixth, the respondent's conduct was isolated in nature. He has not committed any other prior or subsequent violations of the criminal laws.

Seventh, the respondent is a Peruvian national who speaks very little English. He came to this country in August 1985, with his wife, to live with his wife's family. He experienced marital difficulties and was evicted from his wife's parents' house in March 1986. The respondent had no family in the United States and few friends. He was confused and did not know what to do. At this point, his brother-in-law, whom he knew only casually, offered the respondent the use of an apartment. The only condition was that the brother-in-law would occasionally store packages there which the respondent was not to touch nor ask questions about. Being a stranger in this country with no place to live, the respondent accepted his brother-in-law's offer. It appears that Mr. Alzate took advantage of the respondent's extremely vulnerable position and used the respondent to

unknowingly store some of Mr. Alzate's drug paraphenalia. The respondent trusted Mr. Alzate, and thought that his brother-in-law was just being a good friend assisting him in his time of dire need. The respondent actually appears to have been a victim in this case.

Eighth, the respondent fully cooperated with the authorities immediately upon being questioned. Again, as indicated by the assistant United States attorney who prosecuted the respondent:

> Immediately upon his arrest, Mr. [Lumbre] commenced cooperating with federal authorities. Specifically, he indicated what his role was, as well as the involvement of the codefendant Alzate-Patino with regard to the distribution of cocaine. Since Mr. Alzate-Patino pled guilty, Mr. Condor's testimony was not necessary. However, he was willing and available to testify should that have become necessary. In short, the United States was totally satisfied with Mr. [Lumbre's] cooperation (R-3).

The respondent has remarried, and his wife is expecting their first child. He is enrolled in the English as a Second Language program at Atlantic Community College and is highly regarded by his teachers. He is gainfully employed, and he is a very hard worker. He is very courteous and well-liked by his employers. He is a member of the International Club at Atlantic Community College. He regularly attends church and participates in church events and church-sponsored charitable campaigns. The respondent is trying to rehabilitate himself. He admits his actions were wrong, and he is remorseful for his actions. At his sentencing hearing, Judge Thompson recommended that the respondent to permitted to retain his casino hotel employee registration.

When considering the respondent's conduct as taken in context and the overall nature of his character, weighing the above eight criteria, I do not find that his continued registration is inimical to the policies of the Casino Control Act.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the continued registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

OAL DKT. NO. CCC 5502-87

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

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

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

24 December 1987
DATE

STEVEN L. CARNEY, ALJ

Receipt Acknowledged:

12/28/87
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1987
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Report of Investigation of S/A Paul M. Pitts, dated May 20, 1986, re: the April 30, 1986 incident

P-2 Report of Investigation of S/A Thomas R. Terry, dated May 20, 1986, re: the April 30, 1986 incident

P-3 Report of Investigation of S/A Thomas R. Terry, dated June 4, 1986, re: respondent's statement

P-4 Report of Investigation of S/A Thomas R. Terry, dated June 4, 1986, re: grand jury indictment

P-5 Report of Investigation of S/A Thomas R. Terry, dated June 24, 1986, re: respondent's plea

P-6 Report of Investigation of S/A Thomas R. Terry, dated August 13, 1986, re: respondent's sentencing

P-7 United States District Court, District of New Jersey, Indictment in Case 86-188, filed May 28, 1986

P-8 United States District Court, District of New Jersey, Criminal Information in case No. 86-188, filed June 19, 1986

P-9 United States District Court, District of New Jersey, Judgment and Probation/Commitment Order, filed August 18, 1986

For the Respondent:

R-1 Letter of Jerome Robinson, buffet restaurant manager, Harrah's Marina, dated December 14, 1987

R-2 Letter of Rev. Ronald S. Falotico, pastor, Church of the Holy Spirit, dated November 25, 1987

R-3 Letter of Joel B. Rosen, assistant U.S. attorney, dated July 29, 1986

R-4 Letter of Candida Rodriquez, personnel administration Harrah's Marino

R-5 Not in evidence

R-6 Letter of Linda Figueroa, buffet supervisor, Harrah's Marino, dated November 1987

R-7 Letter of Dominick Carides, steward supervisor, Harrah's Marino, dated November 9, 1987

R-8 Letter of Domenic F. Berducci, assistant professor, Atlantic Community College, dated November 9, 1987

R-9 Letter of Luis A. Tavarez, director of Financial Aid, Atlantic Community College, dated November 5, 1987

R-10 Letter of Sonio Ma Santiago, president, Para-Plus Translations, Inc., dated September 29, 1987

R-11 Letter of Jack J. Zappacosta, Esq., dated September 2, 1987

WITNESSES

For the Petitioner:

None

For the Respondent:

Sonia M. Santiago, president, Para-Plus Translations, Inc.

Carlos B. Lumbre, respondent

1110

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-270
APPLICATION NO. 12689-21
OAL DOCKET NO. CCC 4662-88
ORDER NO. 89-1-21

RENEWAL APPLICATION OF JOHN R. MARCUCCI

FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 4, 1989,

IT IS on this 13th day of January 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4662-88
AGENCY DKT. NO. 88-EA-270

JOHN R. MARCUCCI,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Michael D. Miller, Esq., for petitioner

Norma L. Stancil, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 7, 1988 Decided: November 28, 1988

BEFORE JEFF S. MASIN, ALJ:

John R. Marcucci seeks renewal of a casino employee license which was previously issued to him by the Casino Control Commission ("Commission"). The Division of Gaming Enforcement ("Division") reviewed Mr. Marcucci's renewal application and in a letter to the Commission dated April 28, 1988 indicated that it recommended that the license renewal be granted. However, the Division's letter referenced a January 24, 1986 arrest by the Winslow Township Police Department which had resulted in charges of distribution of a controlled dangerous substance (cocaine), N.J.S.A. 24:21-19, comparable to N.J.S.A. 2C:35-5, and conspiracy to distribute a controlled dangerous substance, N.J.S.A. 2C:5-2. Although the letter advised that Mr. Marcucci had been accepted into and successfully completed the Pre-Trial Intervention Program and further advised that the Division would not

object to renewal on the basis of this incident, the Commission chose to transmit the matter to the Office of Administrative Law ("OAL") for a full hearing.

Following receipt of the matter by the OAL, the case was preheard before Honorable Edgar R. Holmes, ALJ on September 1, 1988. Judge Holmes issued a prehearing order which identified the issues for consideration at the hearing as follows:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 24:21-19(a)1 or N.J.S.A. 2C:35-5.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act.

A hearing was held before Administrative Law Judge Jeff S. Masin on November 7, 1988 at the Gloucester City Municipal Court. The record closed following the completion of the hearing on that date.

ISSUES

Since the matter involved an application for renewal of licensure, the burden of establishing the necessary qualifications for renewal was on the petitioner. The petitioner testified that he has been employed in Atlantic City casinos since June of 1980 having worked as a dealer at Bally's Park Place and then in June of 1982 becoming employed at the then Brighton, now Sands, Casino Hotel serving as a dealer and as a blackjack and roulette supervisor. According to the petitioner, he has never been convicted of any criminal offenses.

With respect to the June 24, 1986 incident which resulted in his indictment, Mr. Marcucci explained that he was then a working acquaintance of one John Itri, who was then and is now employed at the Sands as a supervisor and who had served as Marcucci's supervisor on some occasions. Itri and Marcucci both lived in Sicklerville and car pooled together. They would alternate their vehicles. On January 24, 1986 it was Mr. Marcucci's turn to drive his pickup. He picked up Itri at

approximately 10:20 a.m. to proceed to Atlantic City for the start of his job at 12:00. On the way out of the development, Marcucci felt it necessary to stop for gasoline. Itri indicated that he had to speak to an attendant at the Exxon station located at the Winslow exit for the Atlantic City Expressway. When they arrived, Marcucci decided that he had enough gas. Itri stuck his head outside the truck on the passenger side and had a conversation with an attendant named George. Marcucci did not overhear this discussion, which lasted for approximately three minutes. He assumed that Itri, who had just purchased two used automobiles, was speaking to George about having some work done on the cars. When Itri put his head back into the car, Marcucci heard Itri say something to George about seeing him later in the evening about some money. The two men then proceeded to work and worked their full shift until approximately 7:45 or 8:45 p.m. They then proceeded back from Atlantic City toward Sicklerville. They arrived at the Exxon station at 9:20 p.m. At this point, Marcucci definitely needed gas. Itri had indicated that he had to go back to the station to see George. Another attendant was present and he advised Marcucci that the station was out of unleaded gasoline. Itri told this attendant that he had to speak to George but since George was not there they left and proceeded to a nearby Sunoco station. Marcucci produced a credit card slip indicating he had in fact purchased gasoline at the Sunoco station that evening.

After buying the gasoline, the men proceeded back to the Exxon station. George was still not there and so Marcucci indicated that he would take Itri home. However Itri suggested that he would then have to come right back and he suggested that they go for a beer at a nearby bar. They proceeded to the bar and purchased a six pack and headed back toward the Exxon station. By this time George was at the station. He went to the passenger side of the car and Itri again stuck his head out of the vehicle. Marcucci could not hear the conversation until he heard Itri say "your kidding" and then he produced a piece of paper which George had given him which showed that George had been arrested. As they left the station, Itri made some comment about "some sort of transaction." George had asked him what they were going to do. At this point, Marcucci told Itri that he wanted to leave and whatever was going on was Itri's business and Marcucci did not want to be involved. The men proceeded toward Itri's home and as they arrived the police followed them and they were arrested.

From evidence presented later in the hearing by Detective Guy Wiegand of the Winslow Township Police Department, it was determined that George was actually an informant for the police. The transaction involved cocaine. As a result of the

police surveillance which was occurring at the time of the contacts at the Exxon station and the information received from the informant, Marcucci and Itri were ultimately indicted in Indictment 0799-04-86 returned by the Camden County Grand Jury. The indictment charged that on December 19, 1985 Itri had distributed cocaine to George Snyder and charged that on January 24, 1986 Itri and Marcucci had distributed cocaine to Snyder. In addition, it charged Itri and Marcucci with conspiring to commit the crime of distribution of a controlled dangerous substance on January 24, 1986.

Mr. Marcucci was granted admission into the Pre-Trial Intervention Program and successfully completed it. As part of his program, he was required to perform 200 hours of community service as well as submit to urine analyses. He also was required to give a statement to the prosecutor concerning his activities.

During Mr. Marcucci's PTI period, his urine samples showed certain positive results. Specifically, a positive result for benzodiazepin was detected on a specimen which was obtained on November 18, 1986. In addition, a positive result was obtained for cocaine and amphetamine on September 18, 1986. The positive results for these drugs were disturbing to Mr. Marcucci as he denied using any illegal substances during his PTI period. With respect to the finding of a positive for benzodiazepin on December 16, 1986, Mr. Marcucci's family physician, Thomas G. Del Giorno, Jr., D.O. of Philadelphia, submitted a letter indicating that he had examined Marcucci on October 22, November 18 and December 15, 1986 and observed no signs or symptoms of drug abuse. With respect to the November 18, 1986 positive for benzodiazepin, Dr. Del Giorno explained that:

> This class of drugs includes notably Ativan, Xanax, Librium and Valium. A phone call to the laboratory was made after John denied having used any of these substances. What was discovered that a medicine that John was taking for his ulcer, Zantac, could produce a false positive for "benzodiazepins."

The prosecutor's office brought an action to terminate Mr. Marcucci from the PTI program as a result of the positive urine sample received from the MetPath Laboratory in a report of December 30, 1986 for a sample received on September 18, 1986, which showed positive for amphetamines and cocaine. On January 13, 1987, William Johnson, Legal Administrator for MetPath, Inc., advised counsel for Marcucci by letter that:

> . . . the drug testing request on Mr. Marcucci did not include a request for confirmation of the original drug screen result.

> MetPath recommends the use of an alternate methodology, primarily Gas Chromatography with Mass Spepectrophotometry (GC/MS), to confirm all positive results from initial drug screening. As you understand, I am not in a position to cite specific scientific reasoning for confirmation. There is, however, an abundance of literature on this subject given the current interest in drug testing.
>
> The methodology used for the testing on Mr. Marcucci's specimen was the EMT assay by Syva Corporation.

On January 16, 1987, Mr. Marcucci went before Honorable A. Donald Bigley, J.S.C. for the State's application to remove him from the PTI program because of the positive screening. In the course of that proceeding, which is the subject of Exhibit J-1, the transcript of the proceedings, counsel for Mr. Marcucci made an offer to the court that Mr. Marcucci be tested that day, an offer which was made completely unbeknownst to Mr. Marcucci prior to it being suggested to the court. This was done in light of Marcucci's position that he had not used any illegal substance and that there was a false reading on the MetPath Laboratory Report. Judge Bigley then addressed himself to the prosecutor stating:

> What's your position on this, gentlemen, for -- that you're coming in here with all these terminations and now he says you need two tests -- or allegedly says it.

The court continued:

> -- if you are going to ask me to terminate these people on these tests, don't you think you're going to have to come in with some positive testimony then.
>
> . . we're now getting somebody in saying that all these people were terminated, they ought to have two tests.

The prosecutor then noted that Mr. Marcucci's was an unusual case in that in most situations where persons have been terminated from the PTI program in Camden County, they have "admitted that they have in fact used the drugs. This is one of the rare instances where the defendant has come in and actually contested the fact he was using drugs."

Judge Bigley concluded:

> Well I'm going to give this gentlemen the benefit of the doubt based on Mr. Miller -- I'm sure -- I have great respect for him, he would not mislead this court in his conversation (the letter from Mr. Johnson had not yet been received and Miller was making representations to the court as to its anticipated contents).

The prosecutor then went on to note that "the testing procedures within this County are lacking to say -- to say the very least . . ."

As a result of all of the above, the application to remove Mr. Marcucci from the PTI program was rejected and he then proceeded to successfully complete the program. Following his completion of the PTI process, the indictment against him was dismissed and ultimately an order expunging his record was signed by Judge Bigley on June 24, 1988. Mr. Itri entered a plea bargain and received probation.

Mr. Marcucci is 38 years old. He has lived at his present address in Sicklerville for two-and-a-half years and before that lived for six months in Sewell. Prior to that residence, he lived in Sicklerville for two years. He is now married for the third time and has a nine-month-old son by this marriage. He has another child by his first marriage who does not reside with him.

The petitioner was one of the founders of a community association in his neighborhood, which was formed approximately nine months ago and has been working to better the area. He previously owned his own service station before getting into the casino industry.

The petitioner presented a number of character references. These are contained in Exhibits P-12 and 13 and consist of letters from friends and associates who generally have described him as a "trustworthy and reliable friend" "an excellent father, and a caring human being," a person with "honesty and integrity . . . beyond reproach," "attitude toward work is always professional," etc.

On cross-examination, the witness was asked whether he had had any conversation with Mr. Itri concerning what had gone on at the Exxon station while the men were on their way to Atlantic City. He testified that Itri said something regarding drugs and he, Marcucci, told him that that was Itri's business. When they returned from Atlantic City, Marcucci was aware that they had to stop at the Exxon station in order for Itri to get some money. Itri did not say what kind of drugs were involved. The three stops at the Exxon station all occurred within 10 or 15 minutes. Marcucci explained that he assumed that something "shady" was going on, but he was not specifically told that it had to do with drugs up until the point of George's comment concerning his arrest.

Mr. Marcucci denied that he knew Mr. Itri from his old neighborhood in Philadelphia. He also vigorously denied that he had ever been arrested in Cherry Hill in the 1976 on a possession of marijuana charge. No evidence of any kind was produced to substantiate this information which was contained in a question asked by the deputy attorney general. No criminal record sheet, no fingerprints, or any other evidence was produced concerning Mr. Marcucci's alleged arrest.

The Division's case involved the testimony of Detective Weigand of the Winslow Township Police Department. He testified concerning his surveillance of the Exxon station and the information which had been received from George Snyder who was informing for the police. According to Weigand, when he went to the station on January 24, 1986 he had some information from the informant as to who was involved in the drug transactions. Itri had previously gone to the Exxon station and offered the informant a "taste" of cocaine in December 1985 and this was the incident which was the subject of the first count of the indictment, which only charged Mr. Itri. The sale which occurred on January 24 involved a "eightball" that is, one-eighth ounce of cocaine. According to Weigand, Itri fronted the drugs, that is gave them to Snyder without receiving payment for them with the understanding that he would return the "following day." Actually he came back that night. The informant advised the police that Itri would be returning and the police were at the station, with Weigand parked 25 to 30 yards from where Itri was in the truck when it stopped at the station. Itri was supposed to have returned at 9:30, but the truck arrived at 9:10 and drove up to the station. It left and returned at 9:20, just driving through the lot without stopping. At 9:30 the truck arrived again and at this time Snyder was present. Weigand was able to observe what went on. The truck pulled up to the office area and Snyder went to the passenger side. The truck then left in the direction of Itri's home. While Snyder was speaking to Itri, he made a prearranged signal to the officer. This signal was to have indicated that there was additional drugs in the vehicle. However, Snyder gave the signal because he was concerned that he might be assaulted because he had told Itri that he had lost the "eightball" and did not have the money to pay for it. When the vehicle was stopped and searched no additional drugs were found.

Mr. Marcucci gave a statement to the police following his arrest. In that statement he indicated that he had bought gas at the Exxon station during the morning, although at the hearing he testified that he did not. In addition, Marcucci

gave a statement to the prosecutor's office on June 25, 1986, which was quite similar to his trial testimony.

The officer was unable to testify as to whether or not Mr. Itri had in fact had his head and shoulders out of the passenger side of the vehicle while he had his conversation with George. However, George was standing right next to the truck which was a King Cab type vehicle.

In addition to the testimony and previously noted exhibits, the transcript of Mr. Itri's plea to the indictment returned against him given in Superior Court in Camden County on October 6, 1986 before Honorable Isaiah Steinberg, J.S.C. was also introduced. In that statement, Mr. Itri was asked about whether Mr. Marcucci was aware of the drug transaction. He indicated that the cocaine was only his, that is Itri's, that he did not tell Marcucci about the drugs or transaction before the transaction occurred and that it was "strictly my doing . . . ." He did indicate that he told Marcucci about the matter "afterwards" "on the way to work."

DISCUSSION

Mr. Marcucci's license renewal is dependent upon a determination as to the events occurring on January 24, 1986. According to Marcucci's version, he was an innocent bystander who just happened to be driving the car pool on the day that Itri engaged in the transaction with George Snyder, a transaction which involved the sale of cocaine, a transaction which Marcucci knew nothing about before it occurred and which, according to his testimony, he really knew nothing about until after George advised Itri that he, George, had been served with an arrest warrant. According to Mr. Itri's testimony at his retraxit plea proceeding on October 6, 1986, Marcucci did not know of the transaction before it occurred and had no part in it, although he was told about it on the way to work. Presumably, if Itri's testimony is believed, then Marcucci full well knew when taking Itri back to the Exxon station that it was at Itri's intention to collect the proceeds of the sale of the cocaine. Clearly Marcucci knew that this sale was illegal. The question then is whether in fact Marcucci did know prior to his arrest that a drug sale had occurred, when he knew it, and what if anything it means with respect to his receiving a renewed license.

Initially, I FIND that Mr. Marcucci went to the Exxon station on the morning of January 24 in the company of Mr. Itri and had no knowledge whatsoever that Itri was engaging in drug sales or that he intended to engage in a drug sale that

morning. Mr. Marcucci was an innocent bystander in the sense that he was merely driving a vehicle to work with a passenger who he did not know had cocaine in his possession nor did he know had the intention of selling any illegal drugs that morning. In addition, I FIND that Mr. Marcucci's testimony that he did not overhear the details of the discussion between Itri and Snyder that morning was truthful. I FIND that Marcucci left the Exxon station with no knowledge that a drug sale had occurred. There was no evidence to indicate that he should have been alerted by anything which occurred nor do I believe that he overheard anything significant in the discussions taking place on the passenger side of the vehicle out the window which would have led him to believe that some illicit activity was occurring.

The most troubling part of the testimony in the case is Mr. Marcucci's apparent denial that he was told the nature of the business between Itri and Snyder until the very last moment. If Itri is believed he told Marcucci that a drug transaction had occurred while they drove to work. Having considered the testimony, including certain apparently confusing statements made by Marcucci in his testimony, I FIND that sometime during the trip to Atlantic City Mr. Itri, at least to some degree, revealed to Marcucci that a drug sale had occurred. It is not at all clear, and I do not FIND, that Marcucci knew what drug was involved, how much, how much the sale was for, or anything else of that nature. That he did know that Itri had engaged in a drug transaction with Snyder prior to their returning to the Exxon station that evening, I do FIND to be fact. Therefore, Mr. Marcucci knew that he was taking Itri back to the station to collect the proceeds of the sale. At the same time, I FIND Mr. Marcucci's testimony that he did need gas that evening to be accurate. He did purchase gas at the Sunoco station and there is no reason to disbelieve his testimony that he went to the Exxon station intending to purchase gas and could not do so because he was advised by the attendant on the scene at 9:10 p.m. that there was no unleaded gas at the station. Thus, Marcucci had his own reasons for going to the Exxon station which, according to the testimony, was the conveniently located station directly off the Winslow exit. The fact that he knew that Itri would be collecting proceeds of the drug sale, while perhaps information which should have indicated to Marcucci that he should just drop Itri home and get out of the way rather than go to the station, was, I FIND, not the significant motivating factor for Marcucci's return to the Exxon station. However, Mr. Marcucci allowed himself to remain in Itri's company and returned Itri to the Exxon station on two occasions shortly after the first visit at 9:10. This was a mistake in judgment on Marcucci's part, but one which I do not FIND indicative of any intention by Marcucci to become involved in any way, shape or form with Itri's illegal activities. As Marcucci put it at

the hearing, it was "Itri's business." Of course, it would have been more satisfactory, it would have been more sensible, it would have been less suspicious, had Marcucci removed himself from the scene entirely and separated from Itri. He did not do so, and yet I FIND no evidence indicative of any suggestion that Marcucci really intended to play any part in Itri's business. In the sense that he drove the drug dealer to the scene of the sale in the morning, I FIND that he was totally oblivious of what was about to occur. In the sense that he drove the drug dealer to the scene of the sale in the evening so that the financial end of the deal could be completed, I FIND that he acted with something less than Solomonic wisdom. However, despite this lapse of judgment, I FIND that Marcucci was not in any manner a conspirator with Itri and that he had absolutely no intention of engaging in a drug sale, profiting from such, or for that matter, really desiring to help Itri conduct his business.

The Superior Court considered Mr. Marcucci's positive urine samples in the context of the attempt of the prosecutor's office to remove Marcucci from the PTI program. Judge Bigley was apparently satisfied from the information conveyed to him by counsel that there was insufficient certainty from the one test performed by MetPath to assure that in fact the positives were not false. Given the fact that he chose to dismiss the application for removal, and given the information provided in the letter from Mr. Johnson, I CONCLUDE that even under the less stringent standard of proof applicable in administrative proceedings, that is preponderance of the evidence as opposed to beyond a reasonable doubt, there is not sufficient evidence to allow a conclusion that Mr. Marcucci actually had urine which tested positive for cocaine and amphetamines. In the highly technical area of drug testing, and the particularly technical matter of test accuracy, confirmation, etc. proof that the urines were in fact positive such as to condemn Marcucci even civilly must be more persuasive than the mere report of the laboratory of its initial drug screening. The laboratory representatives themselves have indicated by the letter from Mr. Johnson their belief in the necessity of a confirmatory test. Therefore, I CONCLUDE that Mr. Marcucci has not been shown to have violated the terms and conditions of his Pre-Trial Intervention Program nor has it been shown that he was using amphetamines or cocaine or any other illegal substances during the period he was involved in the PTI program.

The burden of establishing the requisite licensing qualifications is on the petitioner. In this case, the evidence does not establish that Mr. Marcucci committed any acts constituting statutory disqualifiers. In addition, I CONCLUDE

that although Mr. Marcucci may have been slightly less than completely candid concerning exactly when he may have learned that a drug transaction had taken place he has as a matter of proof established by clear and convincing evidence that he has the requisite good character, honesty and integrity for casino employee licensure as required by N.J.S.A. 5:12-89b(2). I **CONCLUDE** that Mr. Marcucci's extremely limited "role" as the person who drove his car pool colleague to the site where Itri was to collect his drug proceeds is under the circumstances an insufficient basis for determining that Marcucci either is not of extremely good character or that there is any other reason to prevent him from being licensed. For these reasons, it is **ORDERED** that the renewal application of John R. Marcucci for licensure as a casino employee be **GRANTED.**

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

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

November 4, 1988
DATE

JEFF S. MASIN, ALJ

Agency Receipt:

11-30-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 1 1988
DATE

Ronald J. Rubin
OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of December 16, 1986 from Thomas G. Del Giorno, Jr., D.O.

P-2 Laboratory report from American Clinical Laboratories, Inc., dated November 18, 1986

P-3 Laboratory report from American Clinical Laboratories, Inc., dated October 22, 1986

P-4 Laboratory report from American Clinical Laboratories, Inc., dated December 3, 1986

P-5 Letter of August 12, 1986 from Camden County Pre-Trial Intervention Program

P-6 ORDER OF DISMISSAL UNDER RULE 3:28, State of New Jersey v. John R. Marcucci

P-7 Letter of January 13, 1987 from William Johnson, MetPath, Inc.

P-8 Laboratory report from MetPath Central Laboratory Facility, dated December 30, 1986

P-9 Stenographic Transcript of Plea Retraction, State of New Jersey v. John Louis Itri, October 6, 1986

P-10 ORDER GRANTING EXPUNGEMENT, State of New Jersey v. John Marcucci, dated June 24, 1988

P-11 Letter of October 21, 1988 from Thomas G. Del Giorno, Jr., D.O.

P-12 Character reference letters from Michael Baker, Mr. and Mrs. Robert Ferrilli, Nancy Cappiello, and Angelina Cappiello

P-13 Character reference letter to Lynn Zerillo, Lynda Korn, and Frank J. Sisto

P-14 Sunoco credit card receipt, account no. 500 155 114 75, date January 24, 1986

Joint exhibit:

J-1 Transcript of Recorded Proceedings, State of New Jersey v. John R. Marcucci, dated January 16, 1987

On behalf of respondent:

R-1 Statement of John Raymond Marcucci, dated January 24, 1986

R-2 Laboratory Report, New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau, dated February 14, 1986, with attached request for examination of evidence, dated January 27, 1986

R-3 Indictment No. 0799-04-86, State of New Jersey v. John Louis Itri and John R. Marcucci

R-4 Not in evidence

R-5 Not in evidence

R-6 Not in evidence

R-7 Statement of John Marcucci, dated June 25, 1986

R-8 State of John Marcucci dated July 29, 1986

R-9 Judgment of Conviction, State of New Jersey v. John Louis Itri, with attached Plea Agreement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-108
ORDER NO.: 89-14-21-D
OAL DOCKET NO. CCC 177-89
(ON REMAND CCC 8476-87)

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

Complainant,

v.

MARINA ASSOCIATES,

Respondent.

ORDER

A Stipulation of Settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the Stipulation of Settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 29, 1989, and April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Marina Associates (Marina) pay a civil penalty of $3,638.75 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to the Stipulation of Settlement, Marina contribute a sum not less than $32,748.75 to the Atlantic Mental Health Center, Inc.; and

IT IS FURTHER ORDERED that a letter of reprimand be issued to Marina for violating N.J.S.A. 5:12-119(b).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 177-89
AGENCY DKT. NO. 88-108
(ON REMAND CCC 8476-87)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARINA ASSOCIATES,
Respondent.

Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

James E. Butler, Esq., Associate General Counsel and **Nicholas Casiello, Jr.**, Esq. (Horn, Kaplan, Goldberg, Gorney & Daniels, attorneys), for the respondent, Marina Associates

Record Closed: January 31, 1989 Decided: February 21, 1989

BEFORE **STEPHEN W. THOMPSON**, ALJ

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges the respondent, which operates the Harrah's Marina Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on various dates, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Marina Associates (Marina) filed an Answer to the complaint on November 20, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on June 27 and 28, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W.Thompson. The matter was subsequently adjourned until July 18 and 19, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 19, 1988.

The within matter was remanded to the OAL for further proceedings by order of the Commission on November 3, 1988. On December 14, 1988 the parties submitted another proposed settlement agreement The record closed on January 31, 1989 with receipt of the remanded file.

FINDINGS OF FACT

The Division and Marina have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND**:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

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

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

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

2-21-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Agency Receipt:

2/21/89
DATE

[illegible]
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 24 1989
DATE

Jaynee LaVecchia/KS
OFFICE OF ADMINISTRATIVE LAW

jz

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1	Harrah's At Trump Plaza Rules of the Games
J-2	Responsibilities of Floorperson
J-3	Responsibilities of Pit Boss
J-4	Responsibilities of Casino Shift Manager
J-5	Video Surveillance Tape
J-6	Sworn Interview of Luis Gutierrez
J-7	Sworn Interview of Thomas Spencer
J-8	Sworn Interview of Mary Spadaccini
J-9	Sworn Interview of John M. Hilyard
J-10	Sworn Interview of Dawn Guerrier
J-11	Sworn Interview of Albert L. Kuykendall
J-12	Sworn Interview of Libby Gehman

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Complainant
Richard J. Hughes Justice Complex
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By: Mitchell A. Schwefel
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State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

James E. Butler, Esquire
associate General Counsel
Marina Associates

HORN, KAPLAN, GOLDBERG, GORNY & DANIELS
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Fifth Floor, CitiCenter
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Atlantic City, New Jersey 08401

By: Nicholas Casiello, Jr., Esquire
(609) 348-4515

Attorneys for Respondent
Marina Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 88-108
OAL DOCKET NO.: CCC-08476-87

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	: STIPULATION FACTS AND SETTLEMENT
v.	:
MARINA ASSOCIATES,	:
Respondent.	:

The matters in the above-captioned matter having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Ass't. Attorney General, and Respondent Marina Associates, by and through its attorneys, James E. Butler, Esquire, Associate General Counsel and Horn, Kaplan, Goldberg, Gorny & Daniels, by Nicholas Casiello, Jr., Esquire, it is hereby stipulated to and agreed by and among the parties as follows, for the purposes of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "Division"), now and at all times referenced herein is charged with the responsibility, pursuant to the Casino Control Act (P.L. 1977, c.110, N.J.S.A. 5:12-1 et seq., hereinafter referred to as "the Act"), of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission"), and of prosecuting violations thereof before the Commission.

2. Respondent, Marina Associates (hereinafter referred to as "Marina"), is now and at all times referenced herein, has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all

times referenced herein had its principal place of business located at 1725 Brigantine Boulevard in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Marina is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Marina effective on November 24, 1981, renewed on November 24, 1982 and November 24, 1983 and reissued on May 26, 1984 and has been renewed on an annual basis since that date. Marina has been conducting its casino hotel operations pursuant to said license continually to date since November 24, 1981 including all times referenced herein.

4. Marina is a holder of, and operates pursuant to, a Certificate of Operation effective December 11, 1980, at which time Marina was the holder of a temporary casino permit. Said Certificate of Operation entitles Marina to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

5. On September 28, 1986, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Marina's casino room and gambled at blackjack for approximately 7 (seven) hours; on October 3, 1986, she gambled at blackjack in Marina for approximately 2 (two) hours; on October 29, 1986, she gambled

at blackjack in Marina for approximately 5 (five) hours; and on December 4, 1986, she gambled at roulette in Marina for approximately 10 (ten) minutes. During the aforementioned periods of time that Debra Kim Cohen gambled in Marina, Respondent's casino floor personnel observed and rated the minor's gambling activities. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of Marina's Display Account History for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen which sets forth, inter alia, the dates and time periods Debra Kim Cohen gambled in Marina. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of a Marina player rating slip, dated October 29, 1986, for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen which player rating slip indicates May 24, 1964 as her date of birth.

6. On or about September 27, 1986, as a result of her blackjack play at Marina's casino, Debra Kim Cohen was issued a full meal and beverage complimentary by Marina personnel for use at the Marina Garden restaurant, which is located on the premises of the Marina Casino Hotel complex. While said complimentary was not used by Debra Kim Cohen, attached hereto and made a part of the record hereof as

Exhibit D is a true and correct copy of the complimentary issued to Debra Kim Cohen, a/k/a, Debra Cohen for use at the Marina Garden.

7. Leonard Cohen stated in his sworn statement to the Division that, prior to October 9, 1986, he talked with William Drum, License No. 16989-21, a Security Investigator employed by Marina, about his daugther, Debra Kim Cohen, and provided Mr. Drum with a photocopy of a photograph of Ms. Cohen. Mr. Cohen stated that he informed Mr. Drum that Ms. Cohen was a minor and should not be allowed to gamble in the casino. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of Marina's Display Account History for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen, upon which it is recorded that on October 8, 1986, information was placed in Marina's computerized player account regarding Debra Kim Cohen, i.e. that Miss Cohen was a minor. Attached hereto and made a part of the record hereof as Exhibit E is a true and correct copy of the photocopy of the photograph Mr. Cohen provided to Marina's Security Department.

8. By letter dated November 25, 1986 and received by Marina's Legal Department, Richard L. Press, Esq., attorney for Debra Kim Cohen's father, Leonard Cohen, referring to Mr. Cohen's "continued efforts to stop his underage daughter ... from gambling at your casino," notified and informed Marina that Debra Kim Cohen had gambled at Marina and that Mr. Cohen

wanted Marina to prevent her from gambling therein again. Attached hereto and made a part of the record hereof as Exhibit F is a true copy of the letter from Mr. Press to Marina's Legal Department. Attached hereto and made a part of the record hereof as Exhibit G is a true and correct copy of the photograph of Debra Kim Cohen which was enclosed in the letter referenced as Exhibit F. Upon receipt of the letter from Mr. Press, Marina's Legal Department distributed said letter to its Games, Security, Surveillance, Credit and other personnel by a memorandum dated December 2, 1986, attached hereto as Exhibit H.

9. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

> Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino is a disorderly person....

10. By permitting the minor Debra Kim Cohen to enter its casino on September 28, 1986, October 3, 1986, October 29, 1986 and December 4, 1986 and allowing her to remain in its casino and gamble, for which gambling activity she was issued a full meal and beverage complimentary, as set forth more fully herein, Respondent Marina violated N.J.S.A. 5:12-119(b).

11. Further, Debra Kim Cohen entered Marina's casino and gambled therein on October 29, 1986 and December 4, 1986, notwithstanding that, prior thereto, Leonard Cohen stated in

his sworn statement to the Division that he notified Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Marina.

12. Although, on or about November 25, 1986, Respondent was notified by Richard L. Press, Esq., Leonard Cohen's attorney, that Mr. Cohen's daughter was a minor and, as a consequence, should not be permitted to gamble at Marina, Debra Kim Cohen did enter Respondent's casino and gamble therein on December 4, 1986.

13. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following Exhibits:

(a) Sworn statement of Leonard Cohen taken by the Division on June 27, 1987, without representatives of Marina being present, attached hereto as Exhibit I;

(b) Interoffice correspondence from Bill Drum to Walt Erdle, Director of Security, attached hereto as Exhibit J;

(c) Statements of Security Officer Cheeseman and Security Shift Supervisor Faison attached hereto as Exhibit K, and

(d) Photograph of Debra Kim Cohen taken shortly before the time periods involved herein, as Exhibit L.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that the Commission may impose a letter of reprimand or censure against Respondent Marina, which letter of reprimand or censure shall be made a permanent part of the file of Respondent Marina, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

2. The parties further agree that the Commission may impose a civil penalty of up to $36,387.50 (thirty six thousand and three hundred and eighty seven dollars and fifty cents), against Respondent Marina if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

3. The parties further agree that to the extent that any civil penalty imposed by the Commission against Respondent Marina is less than $36,387.50 (thirty six thousand and three hundred and eighty seven dollars and fifty cents), Respondent Marina shall contribute the difference between $36,387.50 (thirty six thousand and three hundred and eighty seven dollars and fifty cents) and the amount of any civil penalty to the Atlantic Mental Health Center, Inc. Any such contribution shall be used by the Atlantic Mental Health Center, Inc. for the treatment of compulsive gamblers.

4. The parties further agree that such settlement is just and equitable in keeping with the provisions and

underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State of New Jersey

Date: December 14, 1988

By: Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

Date: December 14, 1988

By: Mitchell A. Schwefel
Mitchell A. Schwefel
Ass't. Attorney General

Attorneys for Respondent
Marina Associates
HORN, KAPLAN, GOLDBERG, GORNY & DANIELS

Date: December 7, 1988

By: Nicholas Casiello Jr.
Nicholas Casiello, Jr., Esq.

MARINA ASSOCIATES

BY: James E. Butler 12-5-88
James E. Butler, Esq.
Associate General Counsel

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-351
OAL DOCKET NO. CCC 6617-88
LICENSE NO. 46030-21
ORDER NO. 89-11-11

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	ORDER
v.		
ARETAVIA MARTIN,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 17th day of March 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6617-88
AGENCY DKT. NO. 87-351

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ARETAVIA MARTIN,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)
Aaron M. Smith, Esq., for respondent

Record Closed: December 13, 1988 Decided: January 25, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on March 30, 1987, seeking revocation of the respondent's casino employee license because she was charged with possession of a controlled dangerous substance (marijuana and cocaine) with the intent to distribute it. The State alleges the commission of such an act is a disqualifier from casino employee licensure pursuant to N.J.S.A. 5:12-86c(1), N.J.S.A. 5:12-86g and N.J.S.A. 5:12-90e. It also alleges that the arrest raises the issue of her good

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character, honesty and integrity as required for casino employee licensure by N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14b-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 30, 1988. A plenary hearing convened on December 13, 1988.

STATE'S EVIDENCE

The Division introduced evidence by way of stipulation that respondent was indicted for possession of cocaine in an amount over one ounce with the intent to distribute it. It was also stipulated that at respondent's arrest, which occurred during a raid, the respondent said "If you do this then you have to face the consequences...". The State offered this statement as an admission against interest. It does not appear to be a statement against interest. The purpose of the stipulation was to obviate police testimony.

During direct examination by the Deputy Attorney General, the respondent explained what happened which led to the statement:

Approximately two or three days before Christmas 1986, respondent came home early from her job as a blackjack dealer and discovered her husband and another man having a discussion about some cocaine which was in plain view on the dining room table. The respondent, who said she is opposed to drugs, angrily denounced her husband, left the marital premises, and moved in with her mother. It was only after several days of discussion with her husband, and contingent upon his promise never to have anything to do with drugs again, that she returned to the marital domicile.

Shortly after her return home on December 29, 1986, she was sleeping on the couch when the police raided her home under the authority of a search warrant.

The raiding party caught her husband in the act of selling drugs to another person. Somehow her husband was shot in the hand by the police.

Respondent became hysterical. She confronted her husband and said to him "If you do this then you have to face the consequences."

The respondent denied any knowledge of drugs or drug sales in the home. She satisfactorily explained the presence of a scale, gun and money; all confiscated in the raid. She said the scale was used in her husband's jewelry business, a sideline which both of them followed. She said she knew her husband kept a gun in the house. A $950 cache of money which the police found and confiscated she identified as cash savings.

The respondent testified that she received pre-trial intervention. She said her husband was sent to State Prison.

Respondent's testimony was unrebutted.

RESPONDENT'S EVIDENCE

Respondent said that she has been licensed since 1984 and, but for the suspension following this arrest, was never disciplined.

Respondent testified that she entered the PTI program on the advice of counsel. Her husband, who was sentenced to State Prison, has since been released on Intensive Supervision, a form of house arrest. He takes frequent urine tests to monitor for drug use.

While respondent was suspended for a period of nine months from casino employment as a result of this arrest, she attended community college and worked at Macy's, Wawa and a promotion company called Prestige. She also performed community service at the Salvation Army where she still keeps in touch. She is also involved in other community service and remains involved.

She said she was 23 when this arrest occurred.

FACTUAL DISCUSSION

From the testimony of the respondent and the stipulations in evidence, one cannot find by a preponderance of the credible evidence that the respondent knowingly possessed cocaine or marijuana with the intent to distribute it. She denies that she was aware of the existence of drugs in her house except for the time she discovered her husband buying cocaine from, or selling cocaine to, an unidentified male companion. The statement "If you do this, then you have to face the consequences," is obviously an accusation made to her husband rather than an admission against her own interest. Nothing respondent testified to supports the State's theory that she was a knowing possessor of drugs with the intent to distribute them.

One can speculate that the drug transaction made by her husband while she slept in the next room casts doubt on her testimony that her husband promised never to have anything to do with drugs again, especially since the raid occurred so soon after his promises. On the other hand, one reason cocaine is illegal is that it causes irrational behavior.

The evidence is incapable of supporting the State's claim that the respondent knowingly possessed drugs with the intention to distribute them.

I therefore **CONCLUDE** that the State has failed to prove by a preponderance of the credible evidence that respondent Aretavia Martin possessed a controlled dangerous substance with the intent to distribute it contrary to N.J.S.A. 24:19(a)(1) (now N.J.S.A. 2C:35-5 et seq.).

GOOD CHARACTER, HONESTY AND INTEGRITY

Whether the respondent enjoys the requisite good character, honesty and integrity for casino employee licensure is not an issue in this case absent proof that the respondent committed an offense. She is a licensee and her good character, honesty and integrity are presumed unless the Division introduces some fact which may adversely affect the respondent's reputation for good character, honesty and integrity. Here the Division offered facts concerning a drug sale by respondent's husband but failed to prove by a preponderance of the evidence that the respondent was aware of the sale. Her unrebutted testimony was that she abhorred drugs and even left her husband until she could extract a promise from him that he

would not involve himself with drugs again. This reflects favorably upon her good character, honesty and integrity rather than adversely.

The State offered no other independent proof that the respondent lacked good character, honesty and integrity.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the complaint filed by the Division be and is hereby **DISMISSED**.

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

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

January 25, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1/30/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 30 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Aretavia Martin

For the Respondent:

Aretavia Martin

EXHIBIT LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-326
OAL DOCKET NO. CCC 5051-88
LICENSE NO. 64641-21
ORDER NO. 89-7-15

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. DEBRA L. MAVEN, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 15, 1989,

IT IS on this 23rd day of February 1989, ORDERED that the initial decision is modified to indicate that the finding of an inimical offense is based upon the serious and calculated nature of the offense, committed on casino premises and directly related to the respondent's employment in the casino industry, and upon a conclusion that the record does not demonstrate sufficient evidence of rehabilitation;

IT IS FURTHER ORDERED that the casino employee license held by Debra L. Maven is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5051-88
AGENCY DKT. NO. 87-326

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
DEBRA L. MAVEN,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Debra L. Maven, pro se

Record Closed: December 19, 1988 Decided: January 4, 1989

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

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on March 13, 1987 requesting the revocation of a casino employee license #64641-21 held by Debra L. Maven. The complaint alleged that Ms. Maven had been indicted on February 18, 1987 for theft in the fourth degree contrary to N.J.S.A. 2C:20-3. The incident involved allegedly occurred at Caesar's Boardwalk Regency Hotel/Casino while Ms. Maven was employed as a slot booth cashier on November 23, 1986. She purportedly stole $300 from the master coin bank.

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Ms. Maven requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held before Honorable Lillard E. Law, ALJ on September 6, 1988 and a prehearing order was issued on September 8, 1988. The prehearing order established the issues for consideration as whether Ms. Maven's continued licensure would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c, because she had committed a violation of N.J.S.A. 2C:20-3, theft-fourth degree, and whether she had the requisite good character, honesty and integrity required for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2). As the indictment had been disposed of by admission of Ms. Maven to pretrial intervention and her successful completion thereof, the Division sought to act pursuant to its authority in N.J.S.A. 5:12-86g which permits it to prove the disqualifying nature of activities engaged in by persons whose acts have not been prosecuted in the criminal courts.

A hearing was held before Administrative Law Judge Jeff S. Masin at the Galloway Township Municipal Court on December 19, 1988. The record closed following the hearing.

The facts in this case are not in dispute. At the time of the incident, Ms. Maven was employed as a slot booth cashier at Caesar's. Her job involved giving change to customers. At the beginning of her shift she would count the deposit in the drawer and see that it matched with the prior shifts. On November 23, 1986, at the end of the day she placed an amount on her bag ticket of $424.75 when in fact her bag had $124.75. She counted the drawer down after removing $300 and balanced the paperwork and took the $300 in cash, placing it on her person and then leaving the casino. She admitted to doing this in statements given to the Division's representatives on December 23 and 26, 1986, which documents are in evidence as P-1. At first, when questioned about the $300 Ms. Maven said she did not know what happened. Sometime thereafter, on another day, she indicated that she was responsible, but that Tracy Whitehead, who was a break cashier, was also involved. This was not true. Ultimately, after failing a polygraph which she had volunteered for (she thought that she would fail it) and in order to clear her conscience, she admitted that she was the only one responsible and explained how she had taken the $300. In her statement, and in testimony at the hearing, she indicated that she did so because she needed tuition for her first year graduate school work at Rutgers Camden where she was studying for a Master's in psychology. Ms. Maven is a holder of a B.S. degree in psychology from Glassboro State.

Following her arrest and indictment for the theft of the $300, Ms. Maven was granted pretrial intervention. She was required to perform 60 hours of community service and make full restitution to Caesar's. She completed the community service and the restitution and the indictment was dismissed on June 13, 1988.

Ms. Maven is 26 years old. She has been married for about one year and has a 14-month-old child. As noted, she is a college graduate who intended to pursue her Master's degree, although she has not done so. According to the respondent, since the incident she has "learned a lot" and grown up since she got married.

Ms. Maven denied ever having stolen any money from the casinos on any previous occasion. She had thought about taking this money for some time before she actually acted and was originally deterred by her fear that she might get caught. The money was taken strictly for the purpose of paying for tuition as she had "no other way to finish up her tuition." However, she did not actually continue her education.

The respondent indicated that she did not believe that she necessarily would wish to continue in the position which she held before or a similar position if she were to retain her license "because of this experience."

DISCUSSION

This is a sad case. Debra Maven, holder of a college degree with intentions of pursuing her graduate work, apparently felt compelled by her economic circumstances to give into a temptation which is presented to every casino employee who comes in contact with the vast sums of money which pour through the casino. I believe her completely when she says that the only reason that she took the money was to pay for tuition. I believe her completely as well when she says that she thought about taking the money for some time before she got up enough nerve to do it. Unfortunately, her initial fears of being caught were insufficient to overcome the temptation which the money presented to her.

There can be no other outcome to this case at this time than the revocation of Ms. Maven's casino license. The Casino Control Act intended to prevent individuals of questionable character from involvement in the casino industry. A person who steals from the casinos, under any circumstances and in any amount, is surely an

individual whose character is questionable. While the amount here was not great, Ms. Maven had crossed the threshold. Had she not been caught on this occasion it is certainly possible that she would have stolen again to help finance her needs. However, concentrating solely on the one incident where she in fact did steal, I **CONCLUDE** that it does demonstrate a lack of good character, honesty and integrity which is fatal to her continued licensure.

I **CONCLUDE** that Debra Maven does not at this time possess the good character, honesty and integrity required for licensure, possession of which must be demonstrated by clear and convincing evidence, N.J.S.A. 5:12-90b, incorporating 89b.2. In addition, I **FIND** that her continued licensure would be inimical to the policy of the Act. Although some time has passed since the incident occurred, and although there is certainly some reason to believe that Ms. Maven has learned her lesson and would never again give in to such temptation, it is far too early to be assured of that. Perhaps in the future when time has passed and she has had the opportunity to demonstrate her law abiding nature in other contexts, Ms. Maven will again be able to establish her credentials for licensure. At this time, however, continued licensure is inappropriate.

For the reasons expressed, I **CONCLUDE** that the casino employee license of Debra L. Maven must be **REVOKED**. It is so **ORDERED**.

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

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

DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1-5-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 9 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

On behalf of petitioner:

P-1 Statements of Debra Maven given December 23 and December 26, 1986

P-2 Indictment in State of New Jersey v. Debra Lynn Maven

On behalf of respondent:

R-1 Character reference letter of December 19, 1988, from Linda Hores, Assistant Manager, Professional Laboratories of Atlantic City, Inc.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-70
APPLICATION NO. 73302-22
REGISTRATION NO. 77105-40
OAL DOCKET NO. CCC 7944-88
ORDER NO. 89-25-15

APPLICATION OF ROBERT A. MAY, a/k/a MILANO FOR A CASINO EMPLOYEE LICENSE : ORDER OF REMAND

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 21, 1989,

IT IS on this 30th day of June 1989, ORDERED that this matter is remanded to the OAL for consideration of the following issues:

(1) What effect, if any, does the applicant's March 8, 1988, conviction have upon his qualification for licensure and registration as a casino employee;

(2) What effect, if any, does the applicant's failure to reveal the conviction have upon his qualification for licensure and registration as a casino employee.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7944-88
AGENCY DKT. NO. 89-EA-70

ROBERT A. MAY,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Robert A. May, petitioner, pro se

James Armstrong, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: March 17, 1989 Decided: May 4, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

Robert A. May (petitioner) seeks licensure as a casino employee (non-gaming) under the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By letter report to the Casino Control Commission dated August 19, 1988, the Division of Gaming Enforcement raised questions concerning the petitioner's qualification for licensure. The Commission subsequently afforded the petitioner an opportunity for a hearing.

On January 20, 1989, Administrative Law Judge Edgar R. Holmes conducted a prehearing conference. At that time, the issues to be resolved in this matter were identified. With a slight modification simply to clarify the labeling of the parties, the issues are as follows:

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

2. Whether the petitioner possesses the requisite financial stability, integrity and responsibility, pursuant to N.J.S.A. 89b(1) and 90b.

PROCEDURAL HISTORY

The petitioner's request for a hearing on his license application was received by the Casino Control Commission on October 11, 1988. On November 1, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. As noted, a prehearing conference was conducted by Administrative Law Judge Holmes on January 20, 1989. The hearing in this matter was conducted by the undersigned as scheduled on March 17, 1989. The record closed on that date.

FINDINGS OF FACT

The material facts are essentially undisputed. The petitioner is a 36-year-old resident of Ventnor, New Jersey. In September of this year the petitioner will have been married to Linda Marie Milano for three years. They are expecting their first child. The petitioner also supports his daughter from a previous marriage.

The petitioner testified that he is employed as a carpenter at Trump Castle Casino Hotel. He works a minimum of 40 hours a week in the hotel and the marina. The petitioner stated that he accepts all of the overtime which is available. A letter from Trump Castle Lead Carpenter Arthur Collins was admitted into evidence as Exhibit P-3. Mr. Collins describes the petitioner as a dependable and hard working employee who has a good rapport with his fellow workers. The petitioner has held this job since July 1987.

According to the petitioner, he has been on sick leave disability since October 1988. On November 16, 1988, the petitioner underwent extensive surgery for degenerative and congenital spinal stenosis (Exhibit P-10). The petitioner expected to return to work within a week following the hearing. Because of his sick leave, his earnings for 1988 were lower than normal (Exhibit P-4).

Division of Gaming Enforcement Agent Rita Kazmierski testified that she conducted a background investigation concerning the petitioner's application. This investigation included both a financial check and a criminal record check. Her investigation revealed negative information in both areas.

According to a credit report in reference to the petitioner (Exhibit R-1), a judgment against him was entered in favor of Dee Lumber Company in November 1981. The original judgment amount was $3,250.62 (Exhibit R-2). Ms. Kazmierski stated that no payment has been made on the judgment as of August 1988. The credit report also revealed a charge-off account with Midlantic National Bank South in the amount of $500. Ms. Kazmierski was unable to obtain further information from Midlantic Bank South concerning this debt.

According to the agent, a federal tax lien was filed against the petitioner in Atlantic County; the lien concerns three types of taxes and the total amount was $3,335.91. According to the credit report (Exhibit R-1), the lien was filed in December 1980. When Ms. Kazmierski interviewed the petitioner, he explained that he had owned a framing contracting company and that he had fallen behind in his payroll taxes. The petitioner told Ms. Kazmierski that the Internal Revenue Service had taken money out of his personal account and had used a tax refund to clear his balance. He felt the money had been paid and he did not realize until the Division's investigation that there was a federal tax lien filed against him.

The petitioner also explained the lumber company judgment to the agent. The petitioner had been hired by a physician to put an addition on his home. The petitioner ordered the lumber on his own account, but the physician was to have paid the bill. The physician failed to do so.

Ms. Kazmierski's investigation also revealed a judgment filed by the Department of Labor, Division of Unemployment and Disability Insurance (Exhibits R-3 through R-8). The judgment was filed in June of 1981 in the amount of $1,816.10. The judgment arose from the petitioner's failure to make his employer

contribution payments. According to Ms. Kazmierski, this judgment also remains open. She testified that the petitioner had no explanation for this judgment, as he could not recall any problems with unemployment and disability insurance.

As part of her investigation, Ms. Kazmierski obtained a Federal Bureau of Investigation Criminal History Record concerning the petitioner (Exhibit R-9). In November 1971, the petitioner was arrested by the Margate Police Department and charged with possession of heroin and narcotic paraphernalia. In 1972 the indictment on these charges was dismissed. The petitioner also had several arrests in 1972. In February of that year, the petitioner was charged by the Margate Police with possession by a minor of an alcoholic beverage. He was found guilty of the offense and fined $50.

On April 25, 1972, the petitioner was arrested by the New Jersey State Police and charged with unlawful distribution of a controlled dangerous substance (heroin) and he was subsequently indicted. State Police reports concerning this charge were admitted into evidence as Exhibit R-11). On November 6, 1972, the petitioner was sentenced in the Atlantic County Court to one to two years in the New Jersey State Prison, which sentence was suspended. The petitioner was placed on probation for a period of two years and was fined $100.

Agent Kazmierski testified that her investigation also revealed that the petitioner had been arrested by the Somers Point Police for assault and battery on June 12, 1972. He was found guilty on July 11, 1972, and was fined $500. The next day, the petitioner was charged by the Margate Police Department with possession of narcotics. He was found not guilty on this charge. The agent testified that the petitioner was arrested by the Somers Point Police on a charge of assault and battery on September 7, 1975. He was found not guilty. The petitioner's last arrest occurred on May 15, 1979. He was arrested by the Somers Point Police on a charge of assault and battery. This charge was dismissed on June 12, 1979 (Exhibits R-12 through R-16).

Testifying on his own behalf, the petitioner acknowledged that he had been a user of drugs when he was 19 or 20 years old. This was due to the influence of people with whom he associated. He stated that he was never a pusher of drugs. At the request of a man who turned out to be an undercover agent, the petitioner purchased and then provided some drugs. It was his sincere testimony that he did

this as a favor and that he "never asked for anything -- never received any profits from it."

The petitioner testified that he successfully completed a drug rehabilitation program following his drug arrest. A letter from his counselor at the Institute for Human Development was admitted into evidence as Exhibit P-1. According to this letter, the petitioner continues on a program of individual and family counselling sessions once a month. The petitioner stated that following his drug arrests in the early 1970's, he went ten years without any chemical dependency. However, when his back started giving him trouble about five years ago, he began the frequent use of a prescription painkiller. It was the petitioner's testimony that he was dependent on the painkiller for about one year. Since that time he has not been dependent on any drugs.

The petitioner testified at the hearing that he has made arrangements with each of his creditors to satisfy his judgments and other debts. The Internal Revenue Service has agreed to take his tax refunds and apply them to his account. Because he has been on disability for five months, he has been unable to begin payments. However, it has been arranged that he will begin sending his creditors payments when he has returned to work. The petitioner also testified that he has been reliable and dependable in making payments on his present credit accounts and on car and truck loans. He has also opened a savings account with his wife (Exhibit P-6). It was the petitioner's sincere testimony that his financial problems arose in the first place because of the breakup of his first marriage.

The petitioner's wife, Linda Marie Milano, testified on his behalf. Since their marriage, the petitioner has become more responsible concerning his work and money matters. She stated that they are trying to make amends with everybody and to get caught up with all other bills and obligations. However, the petitioner hurt his back in July of 1988 and when he could no longer stand to lift heavy items he went out on disability in October 1988. Because his surgery was successful, the petitioner was released by his doctor to return to work without restriction. Ms. Milano also noted that she expects to return to work herself after taking maternity leave for three months.

A letter from business representative James J. Mahoney of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 623, was admitted into evidence as Exhibit P-7. According to Mr. Mahoney, he has known

the petitioner for 20 years. He described some of the problems which the petitioner experienced in regard to his divorce and his back injury. Mr. Mahoney considers the petitioner to be dependable, trustworthy and a good family man. William D. Asimos, General Manager of Computer Output Management Technology in Mays Landings, has used the petitioner's carpentry skills on a number of occasions and he feels that the petitioner is a conscientious, trustworthy and diligent worker (Exhibit P-8). TropWorld Casino Supervisor Gary Myslinski has known the petitioner for five years. Mr. Myslinski also feels that the petitioner has become very dependable and that he will be a supportive and stable family man (Exhibit P-9).

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino employee license must demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the Act. Another requirement is that an applicant must demonstrate that he possesses the requisite financial stability, integrity and responsibility, pursuant to sections 89b(1) and 90b of the Act.

The petitioner is now 36 years old. When he was in his early 20's, his associations led him into addictive drug use. His drug involvement led to a criminal record and ultimately, to successful completion of a drug rehabilitation program.

Were it not for problems with his back, the petitioner would likely have avoided any further chemical dependency. However, these problems led to the prolonged use of prescription painkillers. The petitioner wisely reentered substance abuse counseling for himself and his family and he has not had a substance abuse problem for over four years.

The petitioner's financial difficulties are attributable in large part to the breakup of his prior marriage. The depletion of his assets left him unable to pay certain taxes and to satisfy some business creditors. The petitioner has remarried and is now in a stable family environment. When he returns to work following his

disability leave, he will have stable employment as a carpenter with the Trump Castle Hotel and Casino. He has made arrangements with his creditors to satisfy the debts and tax liens. In addition, his wife will return to work following a short maternity leave. Thus, the petitioner has a stable financial environment which will permit him to meet his expenses and eventually satisfy his debts.

Based upon the foregoing, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that he presently possesses the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the Casino Control Act. I further **CONCLUDE** that the petitioner has established by clear and convincing evidence that he possesses the requisite financial stability, integrity and responsibility for licensure as a casino employee, pursuant to sections 89b(1) and 90b of the Act. Therefore, I **CONCLUDE** that the petitioner's application for licensure as a casino employee should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Robert A. May for licensure as a casino employee be **GRANTED**.

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

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

May 4, 1989
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

5/5/89
DATE

Kimberly Wood
CASINO CONTROL COMMISSION

Mailed to Parties:

May 8, 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

jz

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INVENTORY OF EXHIBITS

For petitioner:

P-1 Letter from the Institute for Human Development dated February 9, 1989

P-2 Letter from Charles E. Wilson, M.D., dated February 23, 1989

P-3 Letter from Lead Carpenter Collins dated March 1, 1989

P-4 Petitioner's Wage and Tax Statement for 1988

P-5 1989 Wage and Tax Statement for Linda M. Milano

P-6 Letter from Security Savings Bank dated March 1, 1989

P-7 Letter from Business Representative Mahoney dated February 22, 1989

P-8 Letter from General Manger Asimos dated February 18, 1989

P-9 Letter from Casino Supervisor Myslinski dated February 27, 1989

P-10 Letter from Ronald J. Wisneski, M.D., dated February 8, 1989

For respondent:

R-1 Credit Bureau Associates Report

R-2 Atlantic County Civil Judgment dated July 12, 1982

R-3 Certificate of Debt dated June 8, 1981

R-4 Commitment for Installment Payments dated September 11, 1980

R-5 Notice of Judgment dated August 14, 1981

R-6 Subpoena dated January 5, 1983

R-7 Schedule of Outstanding Liability dated January 5, 1983

R-8 Notice of Outstanding Liability through July 31, 1988

R-9 Criminal History Record Information Requests and FBI and New Jersey State Police Records

R-10 Margate Police Department Record

R-11 New Jersey State Police Investigation Report and Report of Sentencing

R-12 Somers Point Police Department Arrest Report dated June 14, 1982

R-13 Somers Point Police Department Arrest Report dated September 7, 1975

R-14 Somers Point Police Department Arrest Report dated May 15, 1979

R-15 Somers Point Police Record

R-16 New Jersey State Police Arrest Report dated April 25, 1972, with criminal disposition dated November 6, 1972

WITNESSES

For petitioner:

Robert A. May
Linda M. Milano

For respondent:

Rita Kazmierski

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-273
AND 87-388
REGISTRATION NO. 70098-40
APPLICATION NO. 69440-22
OAL DOCKET NOS. CCC 4670-87
AND CCC 4080-87
ORDER NO. 87-48-13

APPLICATION OF TIMOTHY M. McCABE
FOR A CASINO EMPLOYEE LICENSE
AND
STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

Complainant,

v.

TIMOTHY M. McCABE,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 20th day of January 1989, ORDERED that the initial decision is modified as follows:

(1) to correct the reference on p. 2, ¶2, to read Timothy M. McCabe rather than David L. Swain;

(2) to reject the ALJ's conclusion that the respondent demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d) and find that the rehabilitation factors presented were insufficient to conclude that Mr. McCabe

demonstrated by clear and convincing evidence that he is rehabilitated; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Timothy M. McCabe is revoked substantially for the reasons which pertain to his casino employee license application as stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly (EW)
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 4080-87 &
CCC 4670-87

AGENCY DKT. NOS. 87-388 &
87-EA-273

(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND,
PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.,
TIMOTHY M. McCABE,
Respondent,
and
TIMOTHY M. McCABE,
Petitioner,
v.,
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND,
PUBLIC SAFETY, DIVISION,
OF GAMING ENFORCEMENT,
Respondent. [1]

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

Timothy M. McCabe, respondent, pro se

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[1] For the purposes of this decision I will refer to the Division of Gaming Enforcement as the petitioner and to Mr. McCabe as the respondent.

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Record Closed: October 26, 1987 Decided: November 6, 1987

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Timothy M. McCabe's casino hotel employee registration no. 70098-40, pursuant to N.J.S.A. 5:12-91 and 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

The respondent, David L. Swain, also applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (maintenance and cleaning person), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a cleaning person at Harrah's Hotel and Casino. By complaint to the Commission, filed April 21, 1987, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of theft by receiving stolen property (third degree), in violation of N.J.S.A. 2C:20-7, which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on May 1, 1987, that he had the right to a hearing, and that failure to respond within 15 days could result in the revocation of his registration. By application dated May 22, 1987, which was received by the Commission on May 29, 1987, the respondent requested a hearing. On June 3, 1987, the Commission transmitted

the matter to the Office of Administrative Law, which was received on June 11, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The respondent filed with the Commission an application for the issuance of a casino employee license so he could be employed as a maintenance and cleaning person. By letter to the Commission, dated June 8, 1987, the Division objected to the application of the petitioner for licensure as a maintenance and cleaning person, asserting that the petitioner had been convicted of theft by receiving stolen property (third degree), which is disqualifying offense under section 86c(1). The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on July 11, 1987, that since the basis for the complaint and the objection are the same, the Commission requested the case be consolidated for the purpose of hearings. On July 1, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on July 7, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the two cases were consolidated for the purposes of hearings.

A prehearing conference was held before Administrative Law Judge Stephen W. Thompson on August 24, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-7, Receiving Stolen Property in the 3rd degree.

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

C. Whether respondent may demonstrate rehabilitation pursuant to Sections 90h and/or 91d of the Casino Control Act.

A hearing was held on October 26, 1987, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the records were closed.

UNDISPUTED FACTS

On October 29, 1985, officers of the Somers Point, New Jersey Police Department, responded to the Shore Memorial Hospital's parking lot with regard to several juveniles going through cars that were parked in the lot. Upon apprehending the two juveniles, one of them indicated that a person by the name of Tim would drive them to the various parking lots and look out for them while they would go through the cars. Later that same day, the police arrested the respondent, who was in a vehicle that had been stolen in New York, at the Crab Trap parking lot in Somers Point (P-3). The respondent gave a statement to the police indicating that he knew the car in which he was riding was stolen and also admitted to taking the juveniles to the hospital parking lot and being the lookout for them. He also admitted to sharing in the items that had previously been taken from other cars (P-4).

The respondent was indicted by the Atlantic County Grand Jury in an eight-count indictment, Indictment No. 85-11-A880, charging him with Receiving Stolen Property (an automobile) in violation of N.J.S.A. 2C:20-7, six counts of Breaking and Entry (into an automobile), in violation of N.J.S.A. 2C:18-2, and one count of Conspiracy to Commit the Crime of Burglary with the two juvenile co-conspirators, in violation of N.J.S.A. 2C:5-2 (P-1).

On December 10, 1985, the respondent entered a plea of guilty to count one of the indictment charging him with receiving stolen property and count eight of the indictment charging him with conspiracy. On January 17, 1986, the respondent was sentenced in the Superior Court of New Jersey, Atlantic County, and was placed on probation for one year, was sentenced to serve 43 days in the Atlantic County Jail and was given credit for 43 days served, was required to obtain a G.E.D., and was required to find full-time employment. He was also ordered to pay a $50.00 Violent Crimes Compensation Board penalty (P-2).

Upon being placed on probation, the respondent obtained work with Atlantic County Supported Work, which in turn placed the respondent in a house cleaning job at Harrah's in July 1986. After completing a two-month probationary period, the respondent was hired by Harrah's as a cleaning person on a full-time basis in September 1986. The respondent continues to work in that position, and he has received only one disciplinary notice for attendance.

The respondent was 19 years of age at the time of the offense and is currently 21 years of age.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, while experiencing humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

All of the above are undisputed facts in this case, and as such I **FIND** them as **FACT.**

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:
>
> (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

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. . . .

— N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees);

. . . .

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

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been

associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

. . . .

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

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

. . . .

g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to

this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

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

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for a casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual. . . registrant." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other

offense or violation of this Act which would disqualify such person from holding his . . . registration." The Division contends that the respondent was convicted of a violation of N.J.S.A. 2C:20-7, Receiving Stolen Property - third degree, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from licensure and continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's receipt and operation of a stolen automobile and conviction of receiving stolen property - (third degree) in violation of N.J.S.A. 2C:20-7, disqualifies the respondent from licensure and continued registration.

N.J.S.A. 2C:20-7, "Receiving stolen property," provides in pertinent part:

> a. Receiving. A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

N.J.S.A. 2C:20-2, "Consolidation of theft offenses; grading; provisions applicable to theft generally," provides in pertinent part:

> b. Grading of theft offenses.
>
> . . . .
>
> (2) Theft constitutes a crime of the third degree if:
>
> (b) The property stolen is a firearm, automobile, boat, horse or airplane;

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The Division established that the respondent knowingly received stolen property, to wit; an automobile. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-7. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(b), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under section 86c(1). The petitioner is therefore disqualified from licensure and continued registration, pursuant to N.J.S.A. 5:12-86c(1).

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

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. McCabe is presently employed in the casino industry as a maintenance and cleaning person. He holds both a casino hotel employee registration and a temporary casino employee license. He is seeking a nongaming license so he can clean on the casino floor; however, he also indicated that if the license is issued, he would like to upgrade the license in the future.

Second, the respondent committed a violation of N.J.S.A. 2C:20-7, "Receiving Stolen Property" (an automobile), third degree. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a 19-year-old applicant operated an autombile which had been stolen by him and two 15-year-olds when one of the 15-year-olds had taken the keys of her father's car in New York. The trio drove to Somers Point and then stole radios and other articles in order to make money from objects that were taken from cars parked in various parking lots in the area. This is a serious offense, and the respondent did not allege any underlying circumstances which might mitigate substantially the seriousness of his offense.

Fourth, the respondent's misconduct occurred on or about October 29, 1985, when it ceased.

Fifth, the respondent was 19 years of age at the time of the offense. I believe that immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature, and this is his only criminal conviction.

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

Eighth, the respondent has made few rehabilitative efforts. He completed only two years of high school. He failed the court-ordered GED exam. He enrolled in a GED prep course, but he dropped out of the course. He is not married and has no children. He is not involved in any community, social, or religious groups. His supervisor declined to give him a letter of recommendation. He is remorseful about what he did, and feels if his work had been bad, he would have been terminated at the end of his probationary

period. He has worked in the industry for over one year and has not been involved in any further misconduct.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation for licensure, pursuant to N.J.S.A. 5:12-90h.

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

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

It is not readily apparent that the respondent has established that he is a person of good character, honesty, and integrity. The nature of the offense belies a reputation of good character, honesty, and integrity. The respondent has done nothing to establish a good reputation other than working as a cleaning person at Harrah's for the last year. I do not believe he has established a reputation of good character, honesty, and integrity sufficient for casino employee licensure.

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

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

In regard to the first criterion, Mr. McCabe is a casino hotel registrant and is employed as a maintenance cleaning person. As such, he does not have direct responsibilities for actual gaming activities and has minimal potential contact with casino patrons. The remainder of the criteria are discussed above in my discussion of section 90h.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I

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> think that there are two prior Commission cases[2] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a hotel maintenance and cleaning person. He will have no responsibility for any casino gaming activity, and he will have little, if any, contact with casino patrons. Considering the nature of the position he holds, the petitioner's work record in the industry, his demeanor and candor at the hearing, his successful completion of his probationary period, his growth in maturity and acceptance of responsibility, and the isolated nature of his offense when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the petitioner has established by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the application of Timothy M. McCabe for the issuance of a casino employee license be **DENIED.**

It is further **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

---

[2] I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987); and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

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

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

November 6, 1987
DATE

STEVEN L. CARNES, ALJ

November 9, 1987
DATE

Receipt Acknowledged:
CASINO CONTROL COMMISSION

NOV 12 1987
DATE

Mailed to Parties:
OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Superior Court of New Jersey, Law Division - Criminal Atlantic County Indictment, State v. Timothy McCabe, Indictment No. 85-11-19880

P-2 Judgment of Conviction, State v. Timothy McCabe, dated January 17, 1986

P-3 Somers Point Police Department Investigation Report re: Timothy McCabe, dated October 29, 1985

P-4 Statement of Timothy M. McCabe given to the Somers Point Police Department on October 29, 1985

P-5 Personal History Disclosure Form - 4A of Timothy McCabe, filed with the Commission on August 29, 1986

P-6 Personal History Disclosure Form - 2A of Timothy McCabe, filed with the Commission November 10, 1986

For The Respondent:

None

WITNESSES

For the Petitioner:

Timothy M. McCabe, respondent

For the Respondent:

Timothy M. McCabe, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-262
APPLICATION NO. 75181-22
REGISTRATION NO. 80220-40
OAL DOCKET NO. CCC 4223-88
ORDER NO. 89-5-14

APPLICATION OF AUDREY E. MCCALL,
a/k/a SLOAN

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 1, 1989,

IT IS on this 24th day of February 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4223-88
AGENCY DKT. NO. 88-EA-262

AUDREY E. McCALL,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Audrey E. McCall, petitioner, pro se
Charles Kimmel, Law Assistant, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 10, 1988 Decided: December 21, 1988

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The petitioner, Audrey E. McCall, is registered with the Casino Control Commission (Commission) as a casino hotel employee. She is a hotel cleaner. She seeks a non-gaming license in order to be permitted to clean the casino areas as well. The Division of Gaming Enforcement (Division) objected to her application for licensure by letter to the Commission dated May 5, 1988. It alleges petitioner received unemployment compensation while employed. It equates this to theft. Petitioner thereafter requested a hearing. On June 10, 1988, the Commission

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transmitted the matter to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on August 16, 1988 and the following issues to be resolved at the hearing were identified:

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

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

The plenary hearing convened on November 10, 1988.

STATE'S EVIDENCE

The Division proved and the petitioner admitted that from October 25, 1981 through March 28, 1982, while employed at a kosher catering establishment, and from April 23, 1984 to June 11, 1984 while still so employed, the petitioner unlawfully obtained unemployment benefits. On the first occasion the benefits received were $935. On the second occasion the benefits received were $480.

These unlawful payments were discovered and reduced to a certificate of debt in favor of the State of New Jersey. This certificate of debt has been fully satisfied by the petitioner. There was no criminal prosecution.

LEGAL DISCUSSION

Section 86g of the Casino Control Act (Act) permits the Division to show that an applicant for casino employee licensure has committed acts which would

constitute one of the offenses listed as disqualification criteria in section 86c of the Act even though the offense was not prosecuted in the courts of this State.

Theft in the third degree; i.e., in excess of $500 contrary to N.J.S.A. 2C:20-4 and N.J.S.A. 2C:20-2, is such a disqualification offense.

The elements of theft are present in the petitioner's conduct. She obtained the property (money), of another (the state), by deception (representing she was unemployed).

DISQUALIFICATION

I **FIND** that the petitioner committed acts in 1981 and 1982 which constitute the offense of theft in the third degree contrary to N.J.S.A. 2C:20-4 and N.J.S.A. 2C:20-2. The 1984 offense did not rise to the level of a third degree offense.

I **CONCLUDE** that petitioner is disqualified from casino employee licensure unless saved from disqualification by an affirmative showing that she is rehabilitated pursuant to N.J.S.A. 5:12-90h.

PETITIONER'S EVIDENCE

The petitioner frankly admitted her theft. She brought numerous letters which attest to her good character, honesty and integrity and to her fitness for licensure. Some of the letters are from long time neighbors, some from immediate supervisors, some from fellow employees. She appears to be respected in her community. The letters all attest that she is an excellent employee, friend and neighbor.

Petitioner presently works at Showboat Hotel and Casino. She is registered and has a temporary license to enable her to work on the casino floor as a cleaner.

Petitioner has lived for 20 years in the same house in Atlantic City. She raised 5 children there, the youngest of which is now 18.

Her husband was killed in Vietnam in 1968. She returned to the work force in 1981. She has never been arrested or had any problem with the law except for this unprosecuted offense.

REHABILITATION

The Act permits an otherwise disqualified applicant for employee licensure to avoid the onus of disqualification by affirmatively showing that she is rehabilitated. N.J.S.A 5:12-90h. The rehabilitation statute requires consideration of the following eight factors: (1) the nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

I **FIND** that:

(1) The applicant seeks a non-gaming license to permit her to clean the casino area as well as hotel areas. She will not have a gaming relationship with players or handle money or chips.

(2) The offense of theft is always serious. However, in this case there was no individual victim who suffered loss.

(3) The circumstances of this case were that the petitioner applied for and received unemployment insurance benefits when she was in fact working and not eligible to receive them.

(4) The conduct occurred in 1981 and 1982. There was a similar occurrence in 1984 although the amount received did not rise to a third degree crime.

(5) The applicant was approximately 40 years old when the conduct occurred.

(6) The conduct was repeated in 1984 although on that occasion it was not a third degree crime.

(7) There was no evidence that social conditions contributed to the conduct.

(8) The petitioner was not prosecuted for her conduct. She has repaid the entire amount. She has excellent character references and appears to lead a quiet and respectable life. Her supervisors endorse her.

One purpose of the rehabilitation analysis is to give the Commission a basis from which to predict whether the applicant will engage in criminality again. In this case the applicant's conduct was an affront to the public. She depleted public funds without any entitlement to them. Nevertheless, there was no individual victim of her conduct. In this sense, she did not violate the rights of others in the manner of a burglar or purse snatcher. Indeed, her neighbors, co-workers and supervisors consider her a loyal, trustworthy, honest person. They would be willing to repose trust and confidence in her. I am satisfied that the petitioner would not steal from a patron, or the casino at which she is employed. I am also certain the petitioner would not again seek to obtain unemployment funds unless she was qualified to do so.

I **CONCLUDE** that the petitioner has affirmatively shown that she is rehabilitated.

GOOD CHARACTER, HONESTY & INTEGRITY

Any analysis of good character, honesty and integrity should be performed with an eye to the role played by the applicant in casino gaming and operations. A

review of the licensing statute reveals that key employees and mere licensed employees have differing standards for licensure. A mere employee may overcome a statutory disqualifier listed in section 86c (1) of the Act by an affirmative showing of rehabilitation pursuant to section 90h of the Act. A key employee may not overcome such a disqualification. The result is that even a felon can, and often does, achieve employee licensure, but he or she cannot obtain key employee licensure. This applicant seeks an employee license to permit her to perform non-gaming janitorial services on the gaming floor. She has no control of policy or gaming operations. She does not have a gaming relationship with patrons. In fact, she will have no relationship with patrons to speak of. She will simply clean the casino area of the hotel in addition to cleaning its other areas.

The petitioner enjoys an excellent relationship with her neighbors, fellow employees and supervisors. But for this episode, she has led a blameless life. Petitioner has been regularly employed in the industry without any work problems. She has provided for her family, in fact, she said she used the proceeds of the unlawfully obtained unemployment insurance for the maintenance of the family.

Petitioner appears to be a good citizen. I have already concluded in the rehabilitation analysis that she is not the kind of person who will steal again.

I **CONCLUDE** that the petitioner does possess the good character, honesty and integrity required for non-gaming employee licensure pursuant to N.J.S.A. 5:12-89b(2) as it is incorporated in section 90b.

I, therefore, **ORDER** that the letter objection of the Division of Gaming Enforcement be **DISMISSED** and that a non-gaming license be issued to Audrey E. McCall.

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

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

December 21, 1988
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12/27/88
DATE

Marianne Farrow
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 27 1988
DATE

Ronald S. Lanner K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Audrey E. McCall

For the Respondent:

Audrey E. McCall

EXHIBIT LIST

P-1 Ten letters of recommendation
P-2 Five checks

For the Respondent:

R-1 and R-2 Letters from the Division of Unemployment and Disability Insurance, containing a letter to Mrs. McCall and a schedule of overpayments
R-3 Certificate of debt

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-123
APPLICATION NO. 69666-21
OAL DOCKET NO. CCC 6620-88
ORDER NO. 89-22-19
OAL DOCKET NO. CCC 6620-88
(ON REMAND CCC 1231-88)

APPLICATION OF PEGGY McGILL

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 30th day of June 1989, ORDERED that the ALJ's recommendation to deny the casino employee license at issue is rejected for the following reasons:

(1) Although we concur with and adopt the Administrative Law Judge's factual findings and conclusions with respect to the applicant's conviction of a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1), we find from the evidence in the record that the applicant has established her rehabilitation pursuant to N.J.S.A. 5:12-90(h) and her good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b). The factors of particular significance to our determinations are: the offense occurred more than six years ago; the applicant has committed no other transgression against the criminal law, hence her disqualifying offense was to that extent an

isolated incident in an otherwise law-abiding life of approximately thirty-nine years; the sentencing judge had cited "substantial grounds tending to excuse or justify [the applicant's] conduct, though failing to establish a defense" as a mitigating circumstance; the applicant was the provider for three minor children; the applicant has subsequently participated in training programs in order to find better employment; and when employed the applicant has made restitution payments as required by the terms of her probation.

IT IS FURTHER ORDERED that the application for a casino employee license is granted.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6620-88
ON REMAND FROM CCC 1231-88
AGENCY DKT. NO. 88-EA-123

PEGGY M. McGILL,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Peggy McGill, petitioner, pro se
Charles Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr. Attorney General of New Jersey, attorney)

Record Closed: March 20, 1989 Decided: April 18, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on December 1, 1987, objecting to the issuance of a casino employee license to the petitioner because, it alleges, she was convicted of the third degree crime of theft. Such a conviction is listed as a disqualification from casino employee licensure by virtue of N.J.S.A. 5:12-86c(1) and 90e. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on February 26, 1988 to be heard as a contested case

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pursuant to N.J.S.A. 52:14F-1 et seq. The petitioner failed to appear at a plenary hearing on June 21, 1988. The petitioner satisfactorily explained her absence to the Commission and the matter was transmitted a second time to the OAL on September 8, 1988. A prehearing conference was conducted on December 19, 1988, and a plenary hearing convened on March 20, 1989.

DIVISION'S EVIDENCE

The Division offered into evidence a certified copy of an Atlantic County indictment filed against the petitioner charging her with third degree theft by deception by means of unemployment compensation fraud between December 17, 1980 and July 22, 1982 (R-1). Attached to the indictment was a copy of the petitioner's judgment of conviction. She pled guilty to the indictment on August 6, 1984. She was sentenced on September 28, 1984, to probation for five years and ordered to pay restitution in the amount of $5,394.00 in weekly installments of $20 together with a single $25 payment to the Violent Crime Compensation Board. The restitution order is substantially unsatisfied. It has been reduced by means of involuntary deductions from the proceeds of unemployment compensation benefits during periods of petitioner's unemployment.

Petitioner, at one time, was in violation of the reporting requirements of probation but she has since corrected this problem.

PETITIONER'S EVIDENCE

The petitioner collected unemployment benefits for a period of 20 months while she was employed from Friday through Sunday as a maid at an Atlantic City hotel. She was 31 years old at the time. She explained that she had "three kids to feed and keep warm."

The petitioner acknowledged her wrong doing and was "sorry about it." She said she was trying to "correct" herself and promised that "it won't happen again."

Petitioner explained that she was a hotel maid until approximately one and a half years ago when she went to work at Spencer's Gifts as a "meter girl". A "meter

girl" posts packages using a postage meter. Spencer's Gifts was scheduled to close on March 29, 1989.

Petitioner was trained as a data entry clerk by the Division of Training and Employment of Atlantic County. She is well regarded there (P-2).

The petitioner explained that her inability to satisfy the restitution order is a result of her being unemployed from 1984 to 1986 when she was training as a data entry clerk. She received Aid to Families with Dependent Children at the time. Another cause of her inability to satisfy the order is that petitioner is also the sole support of three children without financial help from the children's father. She earns $5 per hour. She explained that she did not report to probation as originally scheduled because she was too busy trying to find a job and had "so much on (her) mind (she) couldn't think about it."

Petitioner said she wanted to learn more about data processing.

George Jackson spoke on behalf of petitioner. He described her as a "well respected lady, an only parent, and a hard working woman."

Petitioner acknowledged that she will not be terminated from probation until September of 1989.

DISQUALIFICATION

I **FIND** that petitioner committed a disqualifying offense as listed in N.J.S.A. 5:12-86c(1).

I **CONCLUDE** that she is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-90e unless saved from disqualification by virtue of N.J.S.A. 5:12-90h, the rehabilitation statute.

REHABILITATION

The Act permits an otherwise disqualified applicant for casino employee licensure to avoid the onus of disqualification by affirmatively showing that she is

rehabilitated. N.J.S.A. 5:12-90h. The rehabilitation statute requires consideration of the following eight factors: (1) the nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

ADDITIONAL FINDINGS OF FACT RELEVANT TO REHABILITATION

I **FIND** that:

(1) The applicant seeks licensure as a casino teller.

(2) The offense was serious although no harm was offered to any single individual.

(3) The respondent received unemployment benefits to which she was not entitled because she was employed.

(4) The offense occurred between December 17, 1980 and July 22, 1982.

(5) The respondent was approximately 31 years old when this offense was committed.

(6) While the offense was of some duration, it has not been repeated.

(7) The failure of the father to assist the respondent in raising 3 children is a factor which may have contributed to this offense.

(8) The respondent has a good reference from a person who supervised her training and from a neighbor. The respondent has not satisfied a restitution order. The respondent has not completed probation.

DISCUSSION AND CONCLUSION CONCERNING REHABILITATION

Because the respondent has not satisfied an order of restitution and because she must complete a period of probation, she cannot be considered rehabilitated from her crime. Until she has completed her sentence of probation she is not even permitted to vote. N.J.S.A. 19:4-1(8). The respondent's inability to satisfy the restitution order is at least partially explained by her low income, periods of unemployment and heavy family responsibility; nevertheless her effort to comply with the order has not been remarkable.

I **CONCLUDE** that the respondent has not affirmatively established her rehabilitation pursuant to N.J.S.A. 5:12-90h.

DISCUSSION AND CONCLUSION CONCERNING GOOD CHARACTER, HONESTY AND INTEGRITY

The provisions of N.J.S.A. 5:12-89b(2) and 90b require that an applicant for casino employee licensure shall establish by clear and convincing evidence her good character, honesty and integrity. A person's arrest and conviction is a relevant consideration in the character analysis according to the statute. Where rehabilitation from the effect of the commission of a criminal offense has not yet occurred, one cannot establish by clear and convincing evidence that she has the requisite good character, honesty and integrity for casino employee licensure.

I **CONCLUDE** that the respondent has not established her good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89b(2) and 90b.

ORDER

I **ORDER** that the petition for casino employee licensure be **DISMISSED** and that petitioner be **DENIED** a casino employee license.

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

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

April 19, 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

4/21/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 21 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

George Jackson
Peggy McGill

For the Respondent:

Richard Clark
Peggy McGill

EXHIBIT LIST

For the Petitioner:

P-1 Letter from George Jackson, dated March 13, 1989
P-2 Letter from Ruth Tunnel, dated March 17, 1989

For the Respondent:

R-1 Indictment and Judgment of Conviction
R-2 Verification of a Violation of Probation
R-3 Letter to Richard Clark from Lana Smith

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-241
OAL DOCKET NO. CCC 4915-88
REGISTRATION NO. 65437-40
ORDER NO. 89-7-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	ORDER
v.		
EDWARD L. MILES,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 15, 1989,

IT IS on this 23rd day of February 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly DJF
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4915-88
AGENCY DKT. NO. 87-241

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
EDWARD L. MILES,
Respondent.

R. Lane Stebbins, Deputy Attorney General for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Edward L. Miles, respondent, pro se

Record Closed: November 28, 1988 Decided: January 9, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF CASE

On December 19, 1986, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking to revoke the respondent's casino hotel employee registration on the grounds he had been indicted for aggravated assault contrary to N.J.S.A. 2C:12-1(b)(1), possession of a weapon for unlawful purposes contrary to N.J.S.A. 2C:39-4 and possession of a weapon contrary to N.J.S.A. 2C:39-5(d). A conviction for aggravated assault may be a disqualifying offense for casino hotel registration pursuant to N J.S.A. 5:12-86c(1) and 91b. The respondent requested a hearing and the matter was transmitted to

the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted on September 1, 1988. At that time the issues to be addressed at the hearing were identified as whether the respondent was convicted of a statutory disqualifier listed at section 86c(1) of the Casino Control Act (Act) and, if not, whether he committed acts which constitute a statutory disqualifier even if they were not prosecuted in the criminal courts of this state. Section 86g of the Act permits the Division to prove criminal acts even when no charges have been filed. In addition, the respondent would be permitted to show his rehabilitation pursuant to section 91d of the Act in the event the Division proved a disqualification. The plenary hearing was held on November 14, 1988. The record was held open until November 28, 1988 to permit the Division time to submit rebuttal evidence to some of respondent's exhibits admitted into evidence but not provided in discovery. No rebuttal evidence was found.

FACTUAL FINDINGS

Respondent is 64 years old and has lost some function in his left arm as the result of an accident. On September 19, 1986, respondent was employed at Ike's Tavern in Atlantic City as a stock clerk. Respondent's wife, an employee of two Atlantic City Casinos, stopped at the bar between jobs to pick him up. He was to drive her to her second job and then return with the car to their home in Smithville. It was approximately midnight when she arrived. An acquaintance of respondent was at the bar. He was not on friendly terms with respondent. Respondent's wife asked the man if she could speak to him privately. His only response was to punch her in the face, knocking her back into the bar stools, and aggravating a recently repaired tear duct injury to her eye.

Respondent immediately went to his wife's aid with the pocketknife he used for opening cardboard boxes. He stabbed the man, who was larger than himself, in the side. The man then knocked respondent to the floor. Respondent said he only wanted to get the man "off his wife."

The man was convicted of the disorderly persons offense of assault upon respondent's wife. Respondent, after a trial by jury, was found guilty of a violation

of N.J.S.A. 2C:12-1b(3), recklessly causing bodily injury to another with a deadly weapon, a crime of the fourth degree. He was also found guilty of a violation of N.J.S.A. 2C:39-5(d), possession of a weapon. On the remaining charge of possession of a weapon for unlawful purposes, he was found not guilty.

Respondent was sentenced to 2 years probation with the condition that he spend 270 days in the Atlantic County Jail.

Respondent was admitted to a work release program so that he could continue his job at the Claridge where he drives a shuttle bus and chauffeurs executives.

Manuel H. Greenberg, J.S.C., the sentencing judge, who also presided at respondent's criminal trial, very carefully explained his reasons for sentencing as he did in this matter. He began by listing two aggravating factors, "the risk that the defendant will commit another crime" and "the need for deterring the defendant and others from violating the law." He then referred to five mitigating factors: that "the defendant acted under a strong provocation"; that "there were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense"; that "the victim of the defendant's conduct induced or facilitated it's commission"; that "the character and attitudes of the defendant indicate that he is unlikely to commit another crime or offense"; and that "the imprisonment of the defendant would entail excessive hardship to himself or his dependents."

Finally, the judge indicated that the weapon involved was of paramount concern in his imposition of sentence. He said "Persons in general as well as the defendant in this case must be deterred from possession(sic) weapons under circumstances likely to produce serious harm. Fortunately for all concerned in this case, the injury was not very serious. However, considering the deadly weapon and the manner in which it was used, serious bodily injury or even death could have resulted." He also indicated that the need for deterrence was of more weight than the risk that the defendant would commit another crime.

The defendant has one prior arrest some 10 or 15 years ago for a minor gambling offense. He is an honorably discharged veteran of the second world war serving in the New Guinea campaign and the Bismark Archipelago.

Respondent's wife testified that he is a good husband, father and grandfather and that nothing like this had ever happened to them before.

LAW AND DISCUSSION

The Casino Control Act, N.J.S.A. 5:12-1 et seq., at section 86c(1), lists certain crimes for the conviction of which an applicant will be denied a casino license. This section is made applicable to casino employee registrants by section 91b, although revocation of a registration for a subsequent disqualifying criminal offense is not mandatory. Neither of the crimes for which respondent was convicted are listed in section 86c(1) as disqualification criteria. No weapons offenses are included in the criterion, N.J.S.A. 2C:39-1 et seq., and the assault did not rise to the level of a second or third degree crime.

Section 86g of the Act permits the Division to prove conduct which would "constitute" any disqualifying offense, even if unprosecuted. In this case, the Division attempted to prove that respondent committed the conduct equivalent to N.J.S.A. 2C:12-1(b)(1). To violate that statute a person must "attempt() to cause serious bodily injury to another, or cause() such injury purposely or knowingly, or, under circumstances manifesting extreme indifference to the value of human life recklessly cause() such injury..."

The key words in any 12-1b(1) prosecution are "serious injury." Either it must be attempted or it must actually be caused. Judge Greenberg and a jury have already found that the actual injury caused "was not serious." There was no testimony at this hearing, either medical or lay, that the injury caused was serious. Neither was there any testimony that respondent attempted to cause "serious bodily injury." The respondent testified that his only intention was to get the man "off his wife."

Judge Greenberg, who heard all of the evidence in this case including the victim's, concluded only that "serious bodily injury or even death could have

resulted" in this case. This is far from actually imputing the intent to commit serious injury to the respondent. The jury did not impute such intent and specifically found that respondent had no such intent when it found respondent guilty of the lesser included offense of "recklessly" causing the injury.

To find an intent to cause a serious bodily injury one must be shown to intend to "create() a substantial risk of death, or ...cause() serious, permanent, disfigurement, or protracted loss or impairment of the function of any bodily member or organ" N.J.S.A. 2C:11-1b. In *State v. Battle*, 209 N.J. Super. 255, (App. Div. 1986) cert. denied 105 N.J. 560. A mugger who snatched the purse from a 60 year old woman who was thrown to the ground and sustained soft tissue injuries was not held to have attempted to commit a serious bodily injury. Even less so then should respondent be held to have attempted serious bodily injury where he was strongly provoked and there were "substantial grounds tending to excuse (his) conduct."

CONCLUSIONS

I **CONCLUDE** that the Division of Gaming Enforcement has failed to prove by a preponderance of the credible evidence that respondent was convicted of a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 91b; and,

I **FURTHER CONCLUDE** that the Division of Gaming Enforcement has failed to prove by a preponderance of the credible evidence that respondent committed acts which constitute a violation of N.J.S.A. 2C:12-1(b)(1) a statutory disqualifier pursuant to N.J.S.A 5:12-86c(1), g and 91b.

Since the State failed to carry it's burden on the disqualification issues there is no necessity for respondent to demonstrate rehabilitation.

I **ORDER** that the complaint filed by the Division seeking revocation of respondent's casino employee registration be **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION,** does not so act in

forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

January 9 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1-12-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 12 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Edward L. Miles

For the Respondent:

Edward L. Miles
Joan M. Miles

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 Judgment of Conviction
P-3 ACPD Investigation Report

For the Respondent:

R-1 Letter, dated October 14, 1988, from Lynnaye Smith, Probation Officer
R-2 Letter of Recommendation, dated November 11, 1988, from Gordon Nichols, Director of Transportation, Claridge
R-3 Letter of Recommendation, dated August 24, 1988, from Tara A. Lyons, Shuttle Bus Supervisor, Claridge
R-4 Medical documents from Atlantic City Medical Center and Eastern Benefit Systems, Inc.
R-5 Letter of Lawrence A. Mintz, Esq.
R-6 Discharge papers from U.S. Army

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-304
LICENSE NO. 23306-21
OAL DOCKET NO. 5186-88
ORDER NO. 89-7-12

RENEWAL APPLICATION OF

RAYMOND MORTON, JR.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 15, 1989,

IT IS on this 28th day of February 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Raymond Morton, Jr., for renewal of his casino employee license is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /pm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5186-88
AGENCY DKT. NO. 88-EA-304

RAYMOND MORTON, JR.,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Raymond Morton, Jr., petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 15, 1988 Decided: January 3, 1989

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

STATEMENT OF THE CASE

The petitioner seeks renewal of his casino employee license, which permits him to work in a licensed casino in a gaming-related position. By letter report to the Casino Control Commission dated May 26, 1988, the Division of Gaming Enforcement objected to the renewal of the petitioner's license, based upon his alleged receipt of unemployment benefits to which he was not entitled between April 1982 and April 1983. The issues to be resolved in this matter are as follows:

1. Is petitioner disqualified from licensure pursuant to section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon his alleged commission of acts which constitute theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, even if such acts were not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Does the petitioner possess the good character, honesty and integrity for casino employee licensure as required by sections 89b(2) and 90b of the act.

3. Has the petitioner, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to section 90h of the act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on his renewal application was received by the Casino Control Commission on July 5, 1988. On July 15, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1988. The hearing was thereafter held as scheduled in Galloway Township on November 15, 1988. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 30-year-old resident of Atlantic City, New Jersey. The petitioner was recently married and he and his wife both support their ten-year-old daughter. The Casino Control Commission first issued the petitioner casino employee license no. 23306-21 in February 1981.

From January to May 1988, the petitioner worked two forty-hour jobs in security. His employers were the Tropicana Casino Hotel and Bally's Grand Casino Hotel. He continues to work at Bally's two days per week, for which his take-home pay is $90.

The petitioner is also employed by Masset Construction Company. He has worked for this company off and on for six years. At the present time, the petitioner takes home $404 per week from his construction laborer employment.

The petitioner also had casino employment between August 1983 and June 1986. During that time, he was employed as a slot cashier at Bally's. He also performed construction work during that time. The petitioner's wife has been employed for several months by the Claridge Casino Hotel. She is an assistant manager of restaurants and her take-home pay is approximately $290 per week.

It was the petitioner's testimony that he is a high school graduate. In addition, he attended college for several months. He characterized the remainder of his work preparation as "on-the-job type training" in both construction and casino work. The petitioner noted that he received an official notice of commendation from Bally's Grand for his exceptional job performance which led to the apprehension of three individuals who had stolen merchandise from the casino's gift shop (Exhibit P-1).

The petitioner acknowledged with candor that he had received unemployment benefits to which he was not entitled between April 1982 and April 1983. At the time, he would work two weeks for Masset Construction and would then be off from work for two weeks. He was supporting his daughter and her mother, whom he eventually would marry in June 1988. Among his other expenses were food, rent, transportation, and union dues.

The petitioner frankly admitted that he was aware when he received the unemployment benefits that he was obligated to report any earnings from employment. He stated that he did not collect benefits every month during the year in question, but he acknowledged that his receipt of the unemployment benefits did span the year. Since that incident, the petitioner has not received unemployment benefits. The total overpayment of benefits was $1,993.75 (Exhibits R-7 and R-9). A certificate of debt for this amount was filed in the Superior Court on June 21, 1985 (Exhibit R-8). Including fines and interest, the total debt owed by the petitioner to the Division of Unemployment and Disability Insurance as of June 27, 1988, was $2,522.90 (Exhibit R-11).

The petitioner has made three payments of $80 each toward reducing his unemployment benefits overpayment debt. He explained sincerely that he had

been unable to save any money prior to his marriage. He will continue to make payments of $80 per month and it is his hope that he will be able to increase the amount to $158 per month, which is the amount requested by the Division of Unemployment and Disability Insurance (Exhibit R-11).

The petitioner acknowledged that he had made a mistake when he accepted unemployment benefits to which he was not entitled. He explained that he was younger then and he was not aware of his responsibilities. The petitioner testified sincerely that he is mature now and he realizes that he must clear this matter up.

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

CONCLUSIONS OF LAW

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

Pursuant to sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(1), the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the act.

It is undisputed that the petitioner received unemployment benefits to which he was not entitled as a result of his failure to report earnings from employment between April 1982 and April 1983. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner

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

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier from licensure, pursuant to sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of $500 but less than $75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20--2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 between April 1982 and April 1983 involved an amount in excess of $500, I **CONCLUDE** that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to sections 86c(1) and 86g of the Casino Control Act.

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

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the

recommendations of persons who have or have had the applicant under their supervision.

The petitioner committed the offense of theft by deception over five years ago. He is now thirty years old, married and supporting his wife and daughter. The earnings which he failed to disclose to the Division of Unemployment and Disability Insurance arose from his sporadic employment in the construction industry.

The petitioner did not disclose his earnings because of his difficult financial situation arising from various expenses which he had to meet. He has admitted his misconduct and he has begun the process of regular payments to reimburse the Division of Unemployment and Disability Insurance for the overpayment of unemployment benefits which he received. He is presently paying $80 per month, and it is his hope that he will be able to nearly double this monthly payment in the future.

The petitioner has worked successfully in the casino industry for a substantial period of time. In fact, he recently held full-time employment simultaneously with two casinos. He has received a commendation for exceptional job performance from the Bally's Grand as a result of his invaluable assistance in the apprehension of theft suspects while he was performing his duties as a security employee.

The petitioner is now a mature and responsible adult. The possibility of the petitioner once again becoming involved in any illegal activity is exceptionally remote. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under section 86c(1) of the act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for renewal of his casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Raymond Morton, Jr., for renewal of a casino employee license be **GRANTED**.

1220

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

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

January 3, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

1-3-89
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 9, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

1221

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Commendation

For the respondent:

R-1 Hamilton Township Arrest Report

R-2 1983 Renewal Application

R-3 Division of Gaming Enforcement Investigation Report

R-4 Field Investigation Report dated July 7, 1983

R-5 Notice of Hearing dated July 14, 1983

R-6 Record of Hearing with petitioner's statement

R-7 Determination and Demand for Refund

R-8 Certificate of Debt

R-9 Schedule of Overpayments

R-10 New Jersey Department of Labor Printout dated November 3, 1988

R-11 Repayment letter dated June 27, 1988

WITNESSES

For the petitioner:

Raymond Morton, Jr.

For the respondent:

Raymond Morton, Jr.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-104
OAL DOCKET NO. 8834-88
REGISTRATION NO. 80659-40
ORDER NO. 89-18-16

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. EDWARD F. O'DONNELL, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1989,

IT IS on this 8th day of May 1989, ORDERED that the initial decision is modified as follows:

> Pursuant to N.J.A.C. 1:1-14.4(a), the relief requested by the Division of Gaming Enforcement is granted and the respondent's casino hotel employee registration is revoked.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Edward F. O'Donnell is revoked substantially for the reasons stated in the initial

decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8834-88
AGENCY DKT. NO. 89-104

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
EDWARD F. O'DONNELL,
Respondent.

R. Lane Stebbins, Deputy Attorney General for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

No appearance by or on behalf of respondent

Record Closed: March 22, 1989 Decided: March 28, 1989

BEFORE **RICHARD J. MURPHY,** ALJ:

The Division of Gaming Enforcement (Division) petitioned the Casino Control Commission (Commission) to revoke the Casino/Hotel Employee Registration of Edward F. O'Donnell (No. 80659-40), because of his arrest for theft by unlawful taking, contrary to N.J.S.A. 2C:20-3 on or about April 2, 1988, while employed by the Tropicana Hotel and Casino as a parking attendant. O'Donnell allegedly refused to submit $12 in parking fees that he had collected, but the charges were later dismissed. Notwithstanding the dismissal, the Division seeks revocation under N.J.S.A. 5:12-86(g). O'Donnell requested a hearing on November 11, 1988, and the matter was referred to the Office of Administrative Law for hearing as a contested case on December 5, 1988, pursuant to N.J.S.A. 52:14F-1 et seq.

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The Office of Administrative Law attempted to notify the respondent Edward F. O'Donnell of the pending matter by sending a notice of filing and of the hearing by ordinary mail to the address on file with the Casino Control Commission and Division of Gaming Enforcement. The post officer returned the notice with the notation "return to sender; attempted not known." The Office of Administrative Law also called the phone number listed in the file between January 18, 1989 through March 21, 1989, and on each occassion reached a recording stating that the number is being checked for trouble. The Casino Control Commission was also contacted on February 7, 1989, and can provide no more current address than the one used.

I **FIND** that the notice of hearing was addressed to the respondent at the address he specified, and that he has not notified the Casino Control Commision or Division of Gaming Enfocement of his current address. I **CONCLUDE** that the notice was reasonably calculated to reach the respondent and afford him the opportunity of a hearing.

Therefore, pursuant to N.J.A.C. 1:1-14.4(a), it is for good cause **ORDERED** that this matter is **DISMISSED.**

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

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

March 28, 1989
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

3/29/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 31 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8216-88
AGENCY DOCKET NO. 89-EA-74
ORDER NO. 89-22-17

SCOTT ONQUE, Petitioner, v. STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 1st day of June, 1989,

ORDERED that the initial decision is rejected to the extent that it finds petitioner Scott Onque failed to meet the standards of financial stability, integrity and responsibility necessary for issuance of a key employee license under N.J.S.A. 5:12-89(b) and

IT IS FURTHER ORDERED that the application for a key employee license is granted and

IT IS FURTHER ORDERED that the application for renewal of a casino employee license is granted.

NEW JERSEY CASINO CONTROL COMMISSION
Walter N. Read, Chair

By: Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8216-88
AGENCY DKT. NO. 89-EA-74

SCOTT ONQUE,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Scott Onque, the petitioner, pro se

Norma Stancil, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: March 14, 1989 Decided: April 10, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Scott Onque, applied to the Casino Control Commission (Commission) for the issuance of a casino key employee license (cage shift supervisor) and the renewal of a casino employee license (cage cashier), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance and renewal of the licenses by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to sections 89b(2) and 90b, which incorporates section 89b(2) by reference, and that the petitioner lacked the requisite

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financial stability, integrity and responsibility for either casino key employee or casino employee licensure, pursuant to sections 89b(1) and 90b, which incorporates section 89b(1) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino key employee license, so that he could be employed as an assistant cage shift supervisor at TropWorld Hotel and Casino. By letter to the Commission, dated August 25, 1988, the Division objected to the petitioner's application for licensure as a cage shift supervisor. The petitioner filed with the Commission an application for the renewal of a casino employee license, so that he could be employed as a cage cashier at TropWorld Hotel and Casino. By letter to the Commission, dated October 4, 1988, the Division objected to the petitioner's application for licensure as a cage cashier. In both letters, the Division objected to the petitioner's licensure, asserting that the petitioner had numerous debts, that he had issued numerous bad checks, that he had defaulted on student loans, that he had been convicted of shoplifting, and that he had received disciplinary action from his employer for having shortages. Based upon these actions, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino key employee licensure, pursuant to section 89b(2), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. The Division further asserts, based upon these actions, that the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. Based upon the first report, the Commission notified the petitioner on October 6, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated October 11, 1988, and received by the Commission on October 12, 1988, the petitioner requested a hearing. By letter dated November 2, 1988, the Commission acknowledged receipt of the petitioner's request for hearing and consolidated both cases for purposes of the hearing, since the objection to renewal of his casino employee license was the same as the objection to his application for a casino key employee license. On November 2, 1988, the Commission transmitted the matter to the Office of Administrative Law, where it was received on November 9, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before Administrative Law Judge Edgar R. Holmes on December 29, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

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

B. Whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(1) as incorporated within section 90b.

A hearing was held on March 14, 1989, at the Main Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

THE FACTS

The Division is challenging, in part, the petitioner's financial stability, integrity and responsibility. The basis of this objection is the petitioner's poor personal financial record. The petitioner obtained two student loans from Howard Savings Bank: one in March 1984 for $1,000, and one in December 1985 for $2,500. These loans were guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On September 22, 1987, the petitioner went into default on his loan. As NJHEAA had guaranteed the loans, it paid Howard Savings Bank $3,760.63, a total that included principal and interest. As of December 14, 1988, the petitioner owed NJHEAA a balance of $3900.13. The petitioner began making payments on this debt at a rate of $60 per month on August 23, 1988 (R-7). He has since voluntarily increased his monthly payment to $100 per month, and he is now making regular payments.

In October 1981, the petitioner had obtained another school loan in the amount of $1,650 from Stockton State College. The petitioner's payments were scheduled to begin on March 8, 1987, in the amount of $90 every three months. The petitioner defaulted on this loan and the account was turned over to a collection agency. Prior to September 1988, the petitioner made verbal arrangements with the collection agency to make payments on this debt. On September 1, 1988, the petitioner began making payments of $100 per month on this debt. He has now settled his account with the

collection agency and is making regular payments directly to Stockton State College (P-13 and P-14).

The petitioner also has several credit card accounts which have been "charged-off." A charged-off account is one that has been dishonored by the purchaser and written off as uncollectible by the store. Over a period of two years, the petitioner opened three accounts with Macy's (Bamberger's). One was a large purchase homemaker's account, one was a flexible account, and one was a New York account. One account was charged-off in June 1985 in the amount of $182.63, one was charged-off in August 1986 in the amount of $1009, and one was charged-off in October 1986 in the amount of $459.56. In October 1987, a judgment was entered in Essex County against the petitioner in the amount of $1,036.11 (plus court costs of $294.75), for the August 1986 charge-off by Macy's. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $40.68 per week. This garnishment has been fully satisfied by the petitioner. The petitioner has also attempted to pay off the other two accounts by submitting payments on those accounts. He submitted a monthly repayment agreement to Macy's on February 23, 1989 (P-10).

An account opened by the petitioner at Stern's Department store was charged-off in March 1984 in the amount of $95. A judgment was obtained against the petitioner regarding this account in Essex County in October 1984. This judgment has been satisfied.

The petitioner's account at Pally's Jewelers (Citizen's Jewelers) was charged-off in the amount of $281.17 in April 1986. This account was turned over to a collection agency and remains unsatisfied (R-9).

The petitioner's account at Sears, Roebuck and Company was charged-off in May 1987, in the amount of $483.94. On May 22, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Sears account in the amount of $518.87. With interest and costs added, the total judgment was for $631.81. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $100.50 per week (R-10). This garnishment has been fully satisfied by the petitioner.

In 1982, the petitioner opened a revolving charge account at J.C. Penney. This account was charged-off in April 1984 in the amount of $300. The petitioner paid off this account in the amount of $353 on December 3, 1988 (R-12).

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In May 1986, the petitioner opened an account with the Popular Club Plan. This account was charged-off in February 1988 in the amount of $100. At the time of the Division's investigation this account was still unsatisfied (R-12); however, it has since been satisfied (P-8).

In 1986, the respondent and two roommates rented an apartment. The telephone bill was listed in all three names; however, the electric company would only list its bill in one name. The petitioner opened the electric account in his name, and his roommates were supposed to split the electric bill with him. During the winter of 1987/1988, the petitioner and his roommates entered into the electric company's budget program. This resulted in the petitioner and his roommates paying a fixed amount for electricity throughout the winter, with any additional charges for usage being prorated throughout the year. In the spring of 1988, the petitioner and his roommates decided to vacate the apartment. The petitioner was billed $956.06 from the Atlantic Electric Company. The petitioner's roommates departed and refused to split the electric bill. On September 6, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Atlantic Electric Company bill in the amount of $965.06. With interest and costs, the total judgment came to $1133.26 (R-12 and R-13). A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino. This garnishment began in February 1989, and the respondent is currently paying this debt.

The petitioner's rent is currently $570 per month. On November 23, 1987, January 12, 1988, and February 10, 1988, the respondent issued checks to the Garden Courts Apartments to pay for his monthly rent. These checks were returned due to insufficient funds in the petitioner's checking account. The petitioner has since been prompt in making his rent payments and has not issued any other bad checks to his landlord in the last year.

Between January 1987 and March 1988, the petitioner issued 28 checks that were returned due to insufficient funds in his checking account. During this same time period, the petitioner was charged 24 overdraft fees by his bank, First Fidelity (R-4). While banking at First Fidelity, the petitioner did not keep accurate records. He did not register all of his checks and did not balance his account. In order to correct this situation and get a clean start, the petitioner closed this account and opened a new account.

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The petitioner opened a new checking account at Midlantic Bank in July 1988. This account has been managed much more efficiently. The petitioner has not had any checks returned for insufficient funds. He has maintained a positive, although sometimes minimal, balance, he has a savings account, and he has his salary deposited by his employer directly into his account (R-5).

On December 21, 1985, the petitioner was arrested for shoplifting by the Egg Harbor Township Police Department. The petitioner had been shopping at Sears at the Shore Mall. He had numerous small purchases in his hands. When he approached the cash register, he fumbled to get his credit card out of his wallet, which was in his back pocket. While holding his other purchases, he placed three small bottles of perfume—with a total value of $36—in his front pocket so that he could retrieve his credit card. He then forgot to take the perfume back out of his pocket when the cashier was ringing up his purchases. He was stopped and detained by store personnel before he left the store (R-16 and R-17).

On January 13, 1986, in the Municipal Court of Egg Harbor Township, the petitioner pleaded guilty to the charge of shoplifting, in violation of N.J.S.A. 2C:20-11. The petitioner was sentenced to spend 15 days in jail, which sentence was suspended, and to pay a $150 fine, $25 in court costs, and a $25 Violent Crimes Compensation Board penalty. As a condition of the suspension of the jail sentence, the petitioner was required to attend a shoplifting course. The petitioner attended the course and satisfied all parts of his sentence on or before March 15, 1986 (R-16).

The petitioner is 25 years old, single, and has no children. He attended Stockton State College from June 1981 through December 1986. He received minimal financial support from his family while he attended school. He worked part-time from September 1981 through March 1983 as a food service helper for CVI Foods at Stockton State College. He worked from eight to sixteen hours per week at an hourly rate of $3.35 per hour. He averaged ten hours per week and earned from $30 to $35 per week. He was terminated from this position for not reporting to work.

Since June 14, 1984, the petitioner has been employed at the Tropicana Hotel and Casino (now TropWorld) as a cage cashier. In 1987, the petitioner obtained a casino key employee license and was promoted to assistant cage shift supervisor. He held this position for one year until his casino key employee license expired and was not renewed due to the Division's letter of objection filed in this case. The petitioner was therefore

returned to his former position of cage cashier. The petitioner presently earns $423 per week, and has a gross income of approximately $22,000 per year.

As a cage cashier, the petitioner functions either as a general cashier at the front window or as a cashier either in the main bank or chip bank. He is responsible for a $100,000 daily bank, which must be checked out accurately. A complete position description is set forth in exhibit R-1. As an assistant cage shift supervisor, he is responsible for checking and verifying all his cashiers' work. He is also responsible for counting down the drawers of all cage cashiers. Two days a week, when the cage shift supervisor was off, the petitioner was in charge and functioned as the acting cage shift supervisor. A complete position description is set forth in exhibit R-2.

The petitioner has received five disciplinary actions for shortages in his bank. On June 29, 1984, only two weeks after he was employed, the petitioner received a written warning regarding a $1,000 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6A). On August 28, 1984, the petitioner received a written warning regarding a $250 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6B). On December 26, 1984, the petitioner received a second written warning for sending out a $100,000 fill transaction instead of a $100,000 credit transaction while working in the chip bank. It was noted that the fill and credit slips are very similar and hard to distinguish (R-6C). On December 22, 1985, the petitioner received a first written warning regarding a $500 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6D). Finally, on August 29, 1986, the petitioner received a verbal warning regarding a $130 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6E).

The petitioner testified that variances do occur and are easy for any cashier to make. It is not uncommon, especially for new cashiers, to incur variances. His variances were not the result of theft.

The petitioner is also a substitute teacher at the Brighton Avenue School in Atlantic City. He has been a substitute teacher for three years. He earns $50 a day, but his income varies depending on his availability and the school's needs.

When the petitioner opened his credit card accounts, he was young and opened them in good faith. As his bills increased, however, he was unable to pay them. His living expenses consumed his salary. He attempted to pay the bills after the accounts were charged-off. He applied for a debt consolidation loan; however, he was turned down for the loan. The companies, however, wanted the full balances in a lump-sum payment and would not allow the petitioner to make payments on the debts over time. The petitioner could not make full payment at one time, so he thought that the garnishment procedure was the best way to pay his bills. Prior to September 1988, he made verbal arrangements to pay his other bills, and he began paying them in September 1988. He has paid or is now paying on all of his debts. His financial situation is on an upward trend, and he now values his credit rating.

The petitioner believes he has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. He is now more responsible. He is not incurring any new debts until all his debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again.

The petitioner was raised in Newark in a family with four children. His parents were divorced when he was only 13 years old. He graduated from high school, and moved to the Atlantic City area to attend Stockton State College. He now needs 32 credits to graduate with a degree in Bio Med Communications. Some credits have been deleted from his record until he fully pays his student loans. The petitioner regularly attends church and participates in the choir. He likes to work with children, and he helps coach basketball at the Brighton School. Being a substitute teacher enables him to work with children, and this gives him a sense of community fulfillment. He also participates in the local chapter of the N.A.A.C.P.

Two witnesses testified on behalf of the petitioner. John E. Copriviza, casino cage manager and assistant casino controller of TropWorld, is the person who originally hired the petitioner. Mr. Copriviza was aware of the petitioner's shoplifting conviction and the garnishment actions, and he is the individual who signed the employee disciplinary actions. Mr. Copriviza supported the petitioner's testimony that shortages, particularly for new employees, are not unusual, but remarked that they are obviously not preferred. In 1987, the total variance at the Tropicana was $140,000, and for January and February of this year, the total variance was approximately $3,000 per month. There was never a

question of honesty or integrity involved in the petitioner's variances. Mr. Onque even volunteered to take a lie detector test concerning his variances.

Mr. Copriviza is happy with the petitioner's performance. Mr. Onque is respected by his supervisors, has a good working relationship with the cashiers, has an excellent knowledge of cage procedures, and has a good relationship with customers. Mr. Copriviza promoted the petitioner from cage cashier to assistant cage supervisor in October 1987 over five other cage cashiers. In October 1988, the petitioner was nominated to be the Tropicana supervisor of the quarter. Mr. Copriviza had to demote the petitioner at the end of October 1988 because of the Division's objection to the issuance of a key employee license to the petitioner. The petitioner has been a good employee, and Mr. Copriviza recommends that he be granted a key employee license. Mr. Copriviza would like to retain the petitioner; in fact, the petitioner is one of two individuals the Tropicana would like to promote to the position of cage manager. Mr. Copriviza believes the petitioner has matured, accepted responsibility, and turned his life around.

Sharon Brown first met the petitioner at Stockton State College in 1981. She has known of his credit problems yet she has never questioned his integrity. She has seen the petitioner at Community Baptist Church every Sunday, has seen him participate in the local chapter of the N.A.A.C.P., and has seen him involved in the community. He is one of the most honorable and trusted people she knows in the community.

The petitioner presented three letters of recommendation. The first is a letter of commendation dated August 29, 1988, and written by John M. Gallaway, president and general manger of the Tropicana. Attached to Mr. Gallaway's letter is a letter of appreciation written by a casino patron commending Mr. Onque for his prompt, professional, and courteous service (P-1).

The second letter, dated February 9, 1989, is written by Van C. Bryant, casino cage shift supervisor at TropWorld. Mr. Bryant wrote:

> Scott Onque' has worked with me since June 13, 1984. He has worked as my Assistant Shift Supervisor on Swing Shift since October 10, 1987. During this time I have found him to be a supervisor of great professionalism and integrity.

> Scott is respected and praised by his co-workers as well as his subordinates for his outstanding job as an Assistant Supervisor. He is very knowledgeable of the position and the jurisdiction that surrounds it in respects to the Casino Control Act.
>
> If this letter is to have any bearing on your decision to license Scott, I highly recommend him to be licensed by the Commission as a Key Employee to continue the fine job he is doing with TropWorld. [P-2]

The third letter, dated February 9, 1989, is written by Bruce Greenfield, principal of the Brighton Avenue School. Mr. Greenfield wrote:

> I am writing this letter as a recommendation for Scott Onque who has served as a substitute teacher at the Brighton Avenue School for the past three years.
>
> Scott is a very reliable young man who has done an excellent job working with students on all grade levels. He is conscientious, cooperative, trustworthy and will do whatever is needed to fulfill his role for the job or task he had undertaken.
>
> I, as Principal of the Brighton Avenue School, would hire Scott without hesitation as a full-time teacher, if he so desired.
>
> I know he will be an asset in whatever position he desires and for whomever he is employed. [P-6]

The petitioner also submitted two management performance evaluations prepared by the Tropicana. The first, a 90-day review performed in January 1988, rates the petitioner's overall performance as "superior" (P-4). The evaluation describes the petitioner as "an excellent example for his subordinates in customer relations." It says that he shows initiative, produces superior quality work, has sound judgment, and has excellent job potential. The second is an annual review performed in October 1988. Again, the petitioner's overall performance was rated as "superior" (P-3). He took the time to learn policies and procedures, showed great improvement in his ability to communicate with supervisors, had total commitment to customer satisfaction, made sound and effective decisions, and exhibited initiative and creativity. The ratings reflect a quality employee who is growing in maturity and experience.

The petitioner also submitted a certificate issued by the State Department of Education after the completion of a criminal record check done pursuant to N.J.S.A. 18A:6-7.1 certifying the petitioner as being approved for public school employment in this State (P-5).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino key employee and casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and credit problems and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct and credit problems were, in part, due to immaturity. I am also inclined to believe that his financial problems were the result of his inexperience in dealing with his financial affairs. As indicated above, the petitioner has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. Credit was freely given to him, yet he could not make the payments. His bills outstripped his income. He is now more responsible. He is not incurring any new debts until all his debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again. His growing maturity and dramatically-improved sense of responsibility has been demonstrated in the last two years by his outstanding success in the casino industry as a cage cashier and in his supervisory position as an assistant cage shift supervisor. He has either fully satisfied or is in the process of satisfying virtually all of his old debts.

FINDINGS OF FACT

1. The petitioner obtained two student loans from Howard Savings Bank: one in March 1984 for $1,000, and one in December 1985 for $2,500. These loans were guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On September 22, 1987, the petitioner went into default on his loan. As of December 14, 1988, the petitioner

owed NJHEAA a balance of $3900.13. The petitioner began making payments on this debt at a rate of $60 per month on August 23, 1988. He has since voluntarily increased his monthly payment to $100 per month, and he is now making regular payments.

2. In October 1981, the petitioner had obtained another school loan in the amount of $1,650 from Stockton State College. The petitioner's payments were scheduled to begin on March 8, 1987, in the amount of $90 every three months. The petitioner defaulted on this loan. On September 1, 1988, the petitioner began making payments of $100 per month on this debt. He has now settled his account with the collection agency and is making regular payments directly to Stockton State College.

3. Over a period of two years, the petitioner opened three accounts with Macy's (Bamberger's). One account was charged-off in June 1985 in the amount of $182.63, one was charged-off in August 1986 in the amount of $1009, and one was charged-off in October 1986 in the amount of $459.56. In October 1987, a judgment was entered in Essex County against the petitioner in the amount of $1,036.11 (plus court costs of $294.75), for the August 1986 charge-off by Macy's. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $40.68 per week. This garnishment has been fully satisfied by the petitioner. The petitioner has also attempted to pay off the other two accounts by submitting payments on those accounts. He submitted a monthly repayment agreement to Macy's on February 23, 1989.

4. An account opened by the petitioner at Stern's Department store was charged-off in March 1984 in the amount of $95. A judgment was obtained against the petitioner regarding this

account in Essex County in October 1984. This judgment has been satisfied.

5. The petitioner's account at Pally's Jewelers (Citizen's Jewelers) was charged-off in the amount of $281.17 in April 1986. This account was turned over to a collection agency and remains unsatisfied.

6. The petitioner's account at Sears, Roebuck and Company was charged-off in May 1987, in the amount of $483.94. On May 22, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Sears account in the amount of $518.87. With interest and costs added, the total judgment was for $631.81. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $100.50 per week. This garnishment has been fully satisfied by the petitioner.

7. In 1982, the petitioner opened a revolving charge account at J.C. Penney. This account was charged-off in April 1984 in the amount of $300. The petitioner paid off this account in the amount of $353 on December 3, 1988.

8. In May 1986, the petitioner opened an account with the Popular Club Plan. This account was charged-off in February 1988 in the amount of $100. At the time of the Division's investigation this account was still unsatisfied; however, it has since been satisfied.

9. In 1986, the respondent and two roommates rented an apartment. The telephone bill was listed in all three names; however, the electric company would only list its bill in one name. The petitioner opened the electric account in his name, and his roommates were supposed to split the electric bill with him. During the winter of 1987/1988, the petitioner

and his roommates entered into the electric company's budget program. In the spring of 1988, the petitioner and his roommates decided to vacate the apartment. The petitioner was billed $956.06 from the Atlantic Electric Company. The petitioner's roommates departed and refused to split the electric bill. On September 6, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Atlantic Electric Company bill in the amount of $965.06. With interest and costs, the total judgment came to $1133.26. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino. This garnishment began in February 1989, and the respondent is currently paying this debt.

10. On November 23, 1987, January 12, 1988, and February 10, 1988, the respondent issued checks to the Garden Courts Apartments to pay for his monthly rent. These checks were returned due to insufficient funds in the petitioner's checking account. The petitioner has since been prompt in making his rent payments and has not issued any other bad checks to his landlord in the last year.

11. Between January 1987 and March 1988, the petitioner issued 28 checks that were returned due to insufficient funds in his checking account. During this same time period, the petitioner was charged 24 overdraft fees by his bank, First Fidelity.

12. While banking at First Fidelity, the petitioner did not keep accurate records. He did not register all of his checks and did not balance his account. In order to correct this situation and get a clean start, the petitioner closed this account and opened a new account.

13. The petitioner opened a new checking account at Midlantic Bank in July 1988. This account has been managed much

more efficiently. The petitioner has not had any checks returned for insufficient funds. He has maintained a positive, although sometimes minimal, balance, he has a savings account, and he has his salary deposited by his employer directly into his account.

14. On December 21, 1985, the petitioner was arrested for shoplifting by the Egg Harbor Township Police Department. The petitioner had been shopping at Sears at the Shore Mall. He had numerous small purchases in his hands. When he approached the cash register, he fumbled to get his credit card out of his wallet, which was in his back pocket. While holding his other purchases, he placed three small bottles of perfume—with a total value of $36—in his front pocket so that he could retrieve his credit card. He then forgot to take the perfume back out of his pocket when the cashier was ringing up his purchases. He was stopped and detained by store personnel before he left the store.

15. On January 13, 1986, in the Municipal Court of Egg Harbor Township, the petitioner pleaded guilty to the charge of shoplifting, in violation of N.J.S.A. 2C:20-11. The petitioner was sentenced to spend 15 days in jail, which sentence was suspended, and to pay a $150 fine, $25 in court costs, and a $25 Violent Crimes Compensation Board penalty. As a condition of the suspension of the jail sentence, the petitioner was required to attend a shoplifting course. The petitioner attended the course and satisfied all parts of his sentence on or before March 15, 1986.

16. The petitioner is 25 years old, single, and has no children.

17. He attended Stockton State College from June 1981 through December 1986. He received minimal financial support from his family while he attended school. He worked part-time from September 1981 through March 1983 as a food service

or not reporting to work.

18. Since June 14, 1984, the petitioner has been employed at the Tropicana Hotel and Casino (now TropWorld) as a cage cashier. In 1987, the petitioner obtained a casino key employee license and was promoted to assistant cage shift supervisor. He held this position for one year until his casino key employee license expired and was not renewed due to the Division's letter of objection filed in this case. The petitioner was therefore returned to his former position of cage cashier. The petitioner presently earns $423 per week, and has a gross income of approximately $22,000 per year.

19. The petitioner has received five disciplinary actions for shortages in his bank. On June 29, 1984, only two weeks after he was employed, the petitioner received a written warning regarding a $1,000 shortage in his drawer. On August 28, 1984, the petitioner received a written warning regarding a $250 shortage in his drawer. On December 26, 1984, the petitioner received a second written warning for sending out a $100,000 fill transaction instead of a $100,000 credit transaction while working in the chip bank. It was noted that the fill and credit slips are very similar and hard to distinguish. On December 22, 1985, the petitioner received a first written warning regarding a $500 shortage in his drawer. Finally, on August 29, 1986, the petitioner received a verbal warning regarding a $130 shortage in his drawer. In all shortage cases, an audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift.

20. Variances do occur and are easy for any cashier to make. It is not uncommon, especially for new cashiers, to incur variances. His variances were not the result of theft. There was never a question of honesty or integrity involved in the petitioner's variances. Mr. Onque even volunteered to take a lie detector test concerning his variances.

21. The petitioner is a substitute teacher at the Brighton Avenue School in Atlantic City. He has been a substitute teacher for three years. He earns $50 a day, but his income varies depending on his availability and the school's needs.

22. The petitioner was raised in Newark in a family with four children. His parents were divorced when he was only 13 years old. He graduated from high school, and moved to the Atlantic City area to attend Stockton State College.

23. The petitioner regularly attends church and participates in the choir. He likes to work with children, and he helps coach basketball at the Brighton School. Being a substitute teacher enables him to work with children, and this gives him a sense of community fulfillment. He also participates in the local chapter of the N.A.A.C.P.

24. Mr. Onque is respected by his supervisors, has a good working relationship with the cashiers, has an excellent knowledge of cage procedures, and has a good relationship with customers. He was promoted the petitioner from cage cashier to assistant cage supervisor in October 1987 over five other cage cashiers. In October 1988, the petitioner was nominated to be the Tropicana supervisor of the quarter. The petitioner is one of two individuals the Tropicana would like to promote to the position of cage manager.

APPLICABLE LAW

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

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> (1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency

> with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

> a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
>
> b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> . . . .
>
> e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

DISCUSSION

The Division contends that the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. The Division further contends that the petitioner lacks the requisite good character, honesty and integrity for casino key employee licensure, pursuant to section 89b(2), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference.

(A) N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b

Under section 89b(1) for casino key employee licensure, and under section 90b, which incorporates section 89b(1) by reference, for casino employee licensure, Mr. Onque was required to establish, by clear and convincing evidence, his financial stability, integrity and responsibility. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that this standard encompasses all financial aspects of the Applicant, the holding company and the other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual. Id at 250.

In Velasquez v. Division of Gaming Enforcement, OAL DKT. CCC 4251-87 (July 7, 1988), aff'd. Casino Control Comm. (September 23, 1988), Judge Law held that the petitioner's recent attempts to establish a payback schedule, although commendable, were "too recent to demonstrate his 'financial stability, integrity and responsibility.' " In In the Matter of the Application of Gilbert L. Smith as a Casino Employee, OAL DKT. CCC 2252-79 (November 8, 1979), mod., Casino Control Comm. (March 20, 1980), the Commission rejected the ALJ's finding of a lack of financial stability and stated:

> 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 Applicant's 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, satisfied 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). [Final Commission Decision at 13-14]

The petitioner's prior financial record in this case is dismal. The record herein demonstrates that petitioner has engaged in a course of conduct in his business dealings that runs counter to the accepted standards of honesty and forthrightness. His history of having been arrested, not paying his debts, having his wages garnished and subsequently having made restitution on the issuance of bad checks fails to engender confidence in his basic financial solvency or his honesty and forthrightness in business dealings. Although the existence of unsatisfied debts has a negative impact upon the petitioner's financial integrity and responsibility, there are other factors here which serve to mitigate the effect. The petitioner has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. He is now more responsible. He is not incurring any new debts until all his old debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again.

His growing maturity and dramatically-improved sense of responsibility has been demonstrated in the last two years by his outstanding success in the casino industry as a cage cashier and in his supervisory position as an assistant cage shift supervisor. He has demonstrated care and prudence in his ability to manage, preserve and enhance the assets entrusted to him. He is responsible each day for large sums of money. The petitioner's undisputed efforts to cure his economic problems are further probative of his financial integrity and responsibility. He did not intend to dishonor his debts. He applied for a debt consolidation loan; however, his application was rejected. He attempted to arrange repayment schedules; however, the creditors wanted a lump-sum payment. When the petitioner could not make a lump-sum payment, garnishment orders were entered. He entered negotiations to repay other debts last September, as he was then more financially solvent. He has now either fully satisfied or is in the process of satisfying virtually all of his old debts. These attempts to reestablish his financial stability and integrity are indicative of the petitioner's effort to regain financial stability, an effort which, in turn, reflects positively upon the petitioner's financial integrity and responsibility.

Based upon the above, I **CONCLUDE** that the petitioner's efforts, however commendable, are too recent to demonstrate that his financial stability, integrity and

responsibility are sufficient for casino key employee licensure. I **CONCLUDE**, therefore, that petitioner has failed to meet his burden of proof, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino key employee license under section 89b(1).

I further **CONCLUDE**, however, that based upon these same efforts, the petitioner has established his present financial stability, and that he has established, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino employee license under section 90b.

(B) N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Onque was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Application of Resorts International, 10 N.J.A.R. at 248. In Resorts, the Commission held that an unfavorable reputation, although it raises questions that must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-98 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct and his credit problems. In addition, the petitioner has fully accepted responsibility for his misconduct and credit problems. He has regained control over his behavior, is repaying or has repaid his debts, has performed admirably within the casino industry during the past several years, and has become a respected

member of his community. Accordingly, the petitioner presents no risk to the public or to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Onque is a person of good character, honesty and integrity, and that he is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under sections 89b(2) and 90b.

DISPOSITION

It is **ORDERED** that the application of Scott Onque for the issuance of a casino key employee license be **DENIED.**

It is further **ORDERED** that the application of Scott Onque for the renewal of a casino employee license be **GRANTED.**

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

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

April 10, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

4/12/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of John M. Gallaway, president and general manager, Tropicana Hotel and Casino, dated August 29, 1988

P-2 Letter of Van C. Bryant, shift supervisor, TropWorld Casino and Entertainment Resort, dated February 9, 1989

P-3 Tropicana Hotel and Casino Management Achievement Evaluation, dated October 10, 1988

P-4 Tropicana Hotel and Casino Management Achievement Evaluation, dated January 10, 1988

P-5 Department of Education approval for public school employment, dated November 19, 1988

P-6 Letter of Bruce Greenfield, principal, Brighton Avenue School, dated February 9, 1989

P-7 Not in evidence (see R-7)

P-8 Petitioner's letter to the Popular Club satisfying his debt, dated February 28, 1989

P-9 Petitioner's letter to Stern Brothers satisfying his debt, dated February 28, 1989

P-10 Petitioner's letter to Eichenbaum, Kantrowitz, Leff & Gulko establishing a payment schedule to satisfy his Macy's debt, dated February 23, 1989

P-11 Petitioner's monthly budget

P-12 Update of petitioner's Midlantic Bank statement and his First Fidelity Bank statement

P-13 Receipt for March payment to Stockton State College on his student loan

P-14 Letter of Mimi Milazzo, NDSL Officer, Stockton State College, dated March 13, 1989

For the Respondent:

R-1 Cage Cashier position description

R-2 Assistant Cage Shift Supervisor position description

R-3 Cage Shift Supervisor position description

R-4 First Fidelity Bank statements, Jan. 20, 1987, through March 17, 1988

R-5 Midlantic Bank statements, July 26, 1988, through Jan. 26, 1989

R-6A through E Tropicana Disciplinary Action Notices

R-7 New Jersey Higher Education Assistance Association loan statement through December 1988

R-8 Superior Court of New Jersey, Atlantic County, order for wage execution, dated October 16, 1987, re: Macy's debt

R-9 Statement of Citizen's Jewelers, dated January 27, 1989, re: Pally's Jewelers account

R-10 Superior Court of New Jersey, Atlantic County, order for wage execution, dated July 1, 1988, re: Sears, Roebuck debt

R-11 Student loan journal, dated January 28, 1989

R-12 Credit Bureau Associates updated credit profile, dated January 5, 1989

R-13 Superior Court of New Jersey, Atlantic County, order for wage execution, dated August 25, 1988, re: Atlantic Electric debt

R-14 Egg Harbor Township Police Department arrest report, dated December 21, 1985

R-15 Statement of guaranteed student loan, dated March 1, 1988

R-16 Summons and Complaint, Egg Harbor Township Municipal Court, issued December 21, 1985

R-17 Personal History Disclosure Form-1

R-18 1984 Form 1040A US Individual Income Tax Return

R-19 Internal Revenue Service Form 4506, Request for Copy of Tax Form

R-20 1987 Form 1040EZ Income Tax Return

R-21 Transcript, Stockton State College

WITNESSES

For the Petitioner:

John E. Copriviza, casino cage manager and assistant casino controller, TropWorld
Sharon Brown
Scott Onque, the petitioner

For the Respondent:

Agent Charles Littlefield, Division of Gaming Enforcement
Agent Robert Ferreir, Division of Gaming Enforcement
Scott Onque, the petitioner

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-272
OAL DOCKET NO. CCC 02347-88
LICENSE NO. 66736-21
ORDER NO. 88-49-19

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. RAGINI RAMESH PATEL, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 14, 1988,

IT IS on this 26th day of January 1989, ORDERED that the initial decision is modified as follows:

> The Commission rejects the Administrative Law Judge's statement about the application of collateral estoppel to a municipal court conviction. An appellate court in this state has determined that collateral estoppel is to be applied equitably rather than mechanically. Matter of Tanelli, 194 N.J. Super. 492, 497 (App. Div., 1984), cert. denied 99 N.J. 181 (1984). The court in that case observed that collateral estoppel would not be

applicable in instances where non-indictable offenses "are adjudicated informally by a plea of guilty or brief trial in municipal court." 194 N.J. Super. at 498. In light of the determination in Tanelli, we do not adopt the ALJ's statement concerning collateral estoppel because we do not believe the doctrine is applicable to this case.

Nevertheless, given the evidence in this case, which includes a videotape of Ms. Patel committing theft during the course of her employment at Harrah's Casino and the insufficiency of the respondent's presentation of rehabilitation factors, we agree with the ALJ's conclusion that Ms. Patel's conviction on December 16, 1987, was for an inimical offense which requires disqualification pursuant to N.J.S.A. 5:12-86(c)(2);

IT IS FURTHER ORDERED that the casino employee license held by Ragini Ramesh Patel is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2347-88

AGENCY DKT. NO. 88-272

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

Petitioner,

v.

RAGINI RAMESH PATEL,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Suresh H. Dalal, Esq., for respondent

Record Closed: October 3, 1988 Decided: October 26, 1988

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

The Division of Gaming Enforcement seeks the revocation of respondent's casino employee license. In a complaint filed with the Casino Control Commission on March 2, 1988, the Division contended that Ms. Patel had been arrested on a charge by unlawful taking, contrary to N.J.S.A. 2C:20-3, on November 5, 1987, while employed by Harrah's Marina Casino Hotel as a slot cashier. The arrest involved an incident in which it was contended that Ms. Patel had removed tokens from wrapped token rolls and then sold the rolls for full value, apparently keeping the removed tokens for her own benefit.

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The complaint further alleged that Ms. Patel had been convicted of the disorderly persons charge of theft by unlawful taking in the amount of $15 by the Atlantic City Municipal Court on December 16, 1987. She was fined $25 and $25 costs. The offense constitutes a disorderly persons offense due to the limited amount involved, N.J.S.A. 2C:20-2.6(c).

The Division argued that Ms. Patel's continued licensure would be inimical to the policies of the Casino Control Act and the interests of the casino industry, thus requiring revocation of her license pursuant to N.J.S.A. 5:12-86c(2), and that she lacked the requisite good character, honesty and integrity required of casino employees by N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90b.

On March 31, 1988, the Casino Control Commission issued an Order suspending Ms. Patel's license pending the final disposition of the complaint or until further order of the Commission, pursuant to N.J.S.A. 5:12-109a(1) and (3). Thereafter, the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 3, 1988. A Prehearing Order, incorporating the issues of the complaint for consideration at the hearing, was issued on June 16, 1988, by Administrative Law Judge Jeff S. Masin. A hearing was held before Judge Masin on October 3, 1988, at the Office of Administrative Law in Atlantic City. The record closed following the hearing.

EVIDENCE

Although the petitioner initially began to present testimony from Sergeant Thomas R. Spivey of the Division of Gaming Enforcement concerning a video tape of Ms. Patel's activities on November 5, 1987, the day of the alleged theft, Ms. Patel's counsel shortly thereafter agreed that his client had in fact been convicted of the theft by unlawful taking in the Atlantic City Municipal Court on December 16, 1987. A copy of the municipal court complaint, containing the adjudication of guilt, as well as the sentence of a $25 fine and $25 costs, was placed in evidence as Exhibit P-2. Therefore, in light of the State's exhibit and the stipulation of defense counsel, I **FIND** that Ms. Patel was convicted of theft by unlawful taking in the amount of $15, a violation of N.J.S.A.

2C:20-3. The conviction entered in the municipal court constitutes a finding of guilt as to Ms. Patel and forecloses any consideration in this forum of whether she was in fact guilty of the offense. The burden of proof standard placed upon the State in the municipal court matter, that is beyond a reasonable doubt, is greater than the burden in the present administrative proceeding, where proof must be by a preponderance of the credible evidence. Therefore, Ms. Patel's guilt has been established.

It is appropriate to make reference to the nature of the theft activity as shown in the brief instances captured on the video tape and testified about by Sergeant Spivey. Essentially, the tape showed Ms. Patel located at her duty station as a slot cashier in a slot carrousel, that is an area surrounding by slot machines in which the cashier works with a bank and takes paper money from patrons in exchange for tokens for the slot machines. On a number of instances during the taped surveillance, Ms. Patel is seen to unwrap the ends of rolls of tokens and remove one or more tokens and place them aside. She then rewraps the end of the roll and replaces the roll in the can from which she takes rolls to sell to patrons. In essence, she was reducing the number of tokens in the roll, putting the removed tokens aside for her later use and then selling the roll of tokens to patrons for the face amount of the roll when in fact the roll contained less than the full amount of tokens which it should have contained and for which the patron is paying. The essence of this activity was to sell to a patron a roll of tokens worth less than the patron had paid for them. The patron is thus short changed.

According to Detective Spivey, casino slot cashiers are required to report any discrepancy in the rolls or the amounts of money which they take in and give out.

When confronted by Detective Spivey concerning her activity, Ms. Patel removed $15 from her bra.

Ms. Patel presented several character witnesses on her behalf. Sumitre Patel and Partini Patel, Sumitre's daughter, neither of whom are related to Ragini Patel, testified that they had known Ms. Patel for up to two years and that in their view she was not capable of stealing, was a nice woman, good and honest. They had not worked with Ms. Patel at Harrah's Casino Hotel. In addition, Ms. Patel presented 10 character reference letters from other individuals who knew her. Each of these was apparently drafted by counsel, since they are exact duplicates of each other except for the notarized

signature of the affiant. The individuals uniformly indicate that Ms. Patel is honest and hardworking and not a person who could commit a crime.

Ms. Patel did not testify in her own behalf.

DISCUSSION

Based upon the evidence presented, it is undisputed that while working as a slot cashier at Harrah's Casino Hotel, Ms. Patel engaged in theft of tokens from her employer's funds, thus stealing from both her employer and also causing patrons who were purchasing the rolls of tokens to receive less than full value for the money which they paid. This activity occurred while she was on duty, and based upon the view of the tape, it is quite clear that Ms. Patel knew exactly what she was doing and acted in a surreptitious manner when she felt secure in opening the rolls, removing the tokens, closing up the rolls and replacing the rolls in the can.

The Casino Control Act was formulated with the intention of keeping out of the casino industry those individuals whose activities indicated that they were unwilling to comply with regulatory procedures, were untrustworthy, were willing to engage in criminal activity, etc. Ms. Patel's activities on November 5, 1987, clearly involved the conduct of criminal activity. Although she was only charged with a disorderly persons offense because of the limited funds stolen, Ms. Patel's conduct clearly constituted criminal activity, in violation of N.J.S.A. 2C:20-3. I so **FIND**.

The continued licensure of a thief who has stolen from the casino while employed is without doubt inimical to the policies of the act and the interest of the casino industry. There can be little else more reprehensible then theft by a casino employee from the casino. In addition, Ms. Patel's action also constituted a form of theft from the patrons.

Ms. Patel presented both live witnesses and affidavits supporting her good character. Unfortunately, there is no indication that any of these individuals had worked with her. Even if they had, their indication that she is an honest individual and one who would not commit a crime is belied by the facts which indicate that in fact Ms. Patel did commit a crime and was convicted of such.

Based upon the evidence presented, I **FIND** that Ragini Patel is an individual whose continued licensure would be inimical to the policies of the Casino Control Act and the interest of the casino industry, N.J.S.A. 5:12-86c(2). Further, I **FIND** that she does not have the requisite good character, honesty and integrity required for licensure, N.J.S.A. 5:12-89b(2), 90b. The fact that after being fired by Harrah's she did obtain employment at Trump's Castle from November 16, 1987 until the date of her suspension on March 31, 1988, is unconvincing with respect to her continued fitness for licensure. There is no evidence before this judge that she advised her new employer of the charges which had led to her dismissal from Harrah's or of the conviction. She presented no character references from Trump's. It seems unlikely that had the new employer been aware that she had been convicted of stealing from Harrah's that it would have retained her in its employment. However, even if it did, that decision appears to have been unwise.

For the reasons expressed, I **CONCLUDE** that the Division has established by a preponderance of the credible evidence that Ms. Patel is not an individual who is qualified for licensure. Therefore, it is **ORDERED** that her casino control license shall be revoked.

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

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

October 26 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

10-27-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 31 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

P-1 Video tape

P-2 Summons and Complaint, State of New Jersey v. Raginiben R. Patel, S77625, Atlantic City Municipal Court

R-1 Affidavit of Paru Patel

R-2 Affidavit of Cheetan M. Patel

R-3 Affidavit of Rasik Barot

R-4 Affidavit of Shakuntla Pandya

R-5 Affidavit of Vipin Pandya

R-6 Affidavit of Basol Hamesh

R-7 Affidavit of Pratima Patel

R-8 Affidavit of Sumitre Patel

R-9 Affidavit of Damini V. Dani

R-10 Affidavit of Devdas V. Dani

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-240
OAL DOCKET NO. CCC 4991-88
(2023-88 ON REMAND)
REGISTRATION NO. 41109-40
ORDER NO. 89-7-13

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. GREGORY SCOTT PERGAMENT, Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 15, 1989,

IT IS on this 24th day of February 1989, ORDERED that the initial decision is rejected for the following reasons:

> The Commission finds that the respondent's offenses of possession of a hypodermic syringe or needle contrary to N.J.S.A. 2C:36-6 and possession, use or being under the influence of a controlled dangerous substance contrary to N.J.S.A. 2C:35-10 are inimical to the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(2) and 86(g). The ALJ failed

to give sufficient weight to the recentness of the offenses, which occurred on November 25, 1987, and to the inherent seriousness of the drug offenses, which took place on the premises of a casino licensee.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Gregory Scott Pergament is revoked; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

F I L E D
DEC
CASINO CONTROL COMMISSION
LEGAL DIVISION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4991-88
AGENCY DKT. NO. 88-240
(ON REMAND CCC 2023-88)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
GREGORY SCOTT PERGAMENT,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Gregory Scott Pergament, respondent pro se

Record Closed: November 21, 1988 Decided: December 27, 1988

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on February 16, 1988, seeking the revocation of the casino employee registration of respondent Gregory Scott Pergament grounded upon its assertion, among other things, that respondent was arrested and charged with possession of a hypodermic syringe contrary to N.J.S.A. 2C:36-6, while on the property of Harrah's Marina Hotel and Casino. Respondent requested a hearing and the matter was transmitted to the

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Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A hearing was held on November 21, 1988, at the Galloway Township Municipal Court and the matter was considered closed on that date.

ISSUES

The issue to be determined by this tribunal was agreed upon and set down at the prehearing conference held on September 6, 1988, is as follows:

1. Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:36-6, Possession of Hypodermic Syringe, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g?

At the hearing, the Division requested and was granted leave to amend its complaint to include the allegation that respondent was in possession of Control Dangerous Substance (CDS) in violation of N.J.S.A. 2C:35-10. This alleged charge also gives rise to the issue of inimically as expressed in Issue No. 1 above.

The prehearing order included the issue of rehabilitation, pursuant to section 91d of the Casino Control Act. However, based upon the Commission's holding in *Davis v. Division of Gaming Enforcement*, 8 N.J.A.R. 301, 313-314, that issue is withdrawn with the understanding that the rehabilitation factors in section 91d will be considered in the inimical analysis. *In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License*, Dkt. No. 79-CL-1 (Commission decision February 26, 1979) (*Resorts*).

UNCONTESTED FACTS

The material facts in this matter are either admitted by respondent or uncontested. Therefore, the following recital constitutes my **FINDINGS OF FACT** in the instant matter:

Respondent is 31 years of age, single with two dependents and the holder of casino hotel employee registration number 41109-40. On November 25, 1987, while employed by Harrah's Marina Hotel and Casino (Harrah's) as a room service captain, respondent purchased heroine on the street in Atlantic City, New Jersey. Respondent purchased the heroine for $20 and a hypodermic syringe for an additional $5. November 25, 1987, was respondent's day off from duty at Harrah's. Nevertheless, respondent took the heroine and syringe to Harrah's for the single purpose to "shoot up with heroine." (P-3). Respondent proceeded to the third floor at the back of the house where food is prepared for banquets and large meetings. He observed that the men's restroom was occupied, therefore, he entered the ladies restroom where he proceeded to inject heroine into his arm with the use of the hypodermic syringe. Neither restroom was used or occupied by patrons of the casino on this day. Subsequently, and while in the third floor ladies restroom, respondent lost consciousness. Thereafter, at 7:05 p.m. (1905 hours), an employee telephoned Harrah's Security to advise that respondent was unconscious in the ladies room where upon four security officers appeared on the scene. Respondent was found unconscious lying on the floor with his back to the wall. He was checked by a security officer who found the syringe on respondent's person, among other things. The duty nurse was called and respondent was then transported to the Atlantic City Medical Center.

Security Supervisor E. Faison completed a General Incident Report setting forth the details of the incident and reported the events to the Atlantic City Police Department (ACPD) (P-3). Detective Anderson of the ACPD appeared on the scene at 7:18 p.m. (1918 hours) to take charge of the investigation. Thereafter, Detective Anderson filed a complaint and summons with the Atlantic City Municipal Court alleging that respondent was in possession of narcotic paraphernalia; i.e., one hypodermic syringe and a small cylindrical device in violation of N.J.S.A. 2C:36-6 (P-2). The complaint was subsequently dismissed.

Respondent admits to having used and abused alcohol and CDS for a period of approximately ten years prior to the overdose incident on November 25, 1987. He asserted that he used alcohol everyday, on and off the job site. He used marijuana and cocaine every fortnight but never on the work premises. It was his testimony that he had used heroine infrequently; i.e., every six months or so. The

incident of November 25, 1987 was his first experience of using heroine on the job site.

After the incident of November 25, 1987, respondent continued to use and abuse the use of alcohol. In December 1987, he was employed by Resorts International Hotel/Casino (Resorts). On or about June 2, 1988, he sought the aid of Lori Weinberg, Employee Relations counselor with Resorts. As a consequence of Ms. Weinberg's assessment of respondent's addiction problems, respondent was enrolled as an out-patient in the Institute for Human Development, Atlantic City (R-3). Respondent has remained free from alcohol and drugs since on or about June 1987 (R-1). Respondent, who is presently employed by Resorts under his registration, asserts that he intends to lead a drug and alcohol free existence for the rest of his life.

DISCUSSION AND CONCLUSIONS

The Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. provides at section 91b that:

> ...Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

Section 86c (1) enumerates certain criminal offenses which, if committed by a casino hotel registrant, would automatically disqualify that individual from continued registration in the gaming industry in this State whether or not the individual was convicted of the offense, pursuant to section 86g of the Act. Neither of the offenses cited by the Division as alleged to have been committed by respondent are per se disqualifying offenses pursuant to N.J.S.A. 5:12-86c(1); i.e., N.J.S.A. 2C:36-6, Possession or Distribution of Hypodermic Syringe or Needle, N.J.S.A. 2C:35-10, Possession, Use or Being Under the Influence.

The Division brings this action to revoke respondent's registration under the provisions of section 86c(2) of the Act which provides, in pertinent part, as follows:

> Any other offense under present New Jersey or federal law which indicates that [registration]... would be inimical to the policy of this Act and to casino operations;....

As stated in *Davis*, supra. at 313, the accepted analytical approach to inimically was first set forth in *Resorts*, supra. at 15, 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 gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The facts in this matter clearly demonstrate that for a period of ten or more years, respondent was addicted to chemical substances by which he engaged in the abuse of alcohol, marijuana, cocaine and heroine. His offenses include the possession and use of CDS and possession and use of a hypodermic syringe in a casino which, the Division argues, gives rise to the offense as inimical to the policies of the Act.

While it is true, in fact, that respondent was in possession of illegal drug paraphernalia and, obviously, CDS while on the premises of a casino; it is also true that he used the devices and substances on a day he was not assigned to work at the casino. Rather, he chose his day off from work to use a restroom in a remote area of the casino, not likely to be used by the public, as the location to inject himself with the addictive substance. The consequence of his act was a near disaster; i.e., an overdose of heroine which could have been fatal.

Respondent survived and, after some serious contemplation as to his future, he engaged in rehabilitative activities which would free him from his alcohol and

drug addiction. Thus far, after approximately five months of alcohol and drug counseling together with regular attendance at Narcotics Anonymous (NA) meetings, respondent's efforts have been successful and the prognosis for his remaining alcohol and drug free are excellent (R-2). This prognosis is supported and enhanced by the fact that respondent has been employed in the casino industry since December 1987 without a recurring incident.

While the actions of respondent on November 25, 1987 can neither be condoned nor countenanced, neither does it under these particular circumstances, rise to an offense as inimical to the Act. As observed by the Commission in *Davis*, supra at 314, while the "integrity of the regulatory process" differs depending upon the license sought, the process, although strict, is least stringent for casino hotel registrants.

I **CONCLUDE**, therefore, while respondent's actions on November 25, 1987 were inappropriate and unbecoming, they were not inimical to the policies of the Act.

Accordingly, I **CONCLUDE** that the Division's complaint is without merit and, therefore, is **DISMISSED**.

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

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

27 December 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

12-29-88
DATE

Marianne Farrell
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1988
DATE

Ronald C. Lanker RK 5
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Gregory Scott Pergament

For the Respondent:

Gregory Scott Pergament

DOCUMENTS

For the Petitioner:

P-1 Atlantic City Police Department Investigation Report
P-2 Complaint
P-3 General Incident Report (2 pages)

For the Respondent:

R-1 Institute for Human Development (3 pages)
R-2 Associates for Life Enhancement
R-3 Resorts International Casino-Hotel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-EA-110
OAL DOCKET NO. CCC 2669-88
LICENSE NO. 10085-21
ORDER NO. 89-2-8

APPLICATION OF JEANNIE D. PRICE
A/K/A GRUBER FOR RENEWAL OF HER CASINO EMPLOYEE LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the administrative law judge having filed with the Commission an initial decision recommending that the subject application for renewal be denied; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989; and the Commission having identified certain conflicting statements in the initial decision concerning the applicant's good character, honesty and integrity,

IT IS on this 31st day of January 1989, ORDERED that, for the reasons stated at the meeting of January 11, 1989, which are incorporated herein by reference, this matter is remanded to the Office of Administrative Law for further proceedings at which the ALJ shall reassess the applicant's 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 the parties be permitted to adduce such additional evidence on remand as the ALJ shall permit in the sound exercise of his discretion pursuant to N.J.A.C. 1:1-15.1(c).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2669-88
AGENCY DKT. NO. 88-EA-110

JEANNIE D. PRICE,
a/k/a JEANNIE D. GRUBER,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Joseph DiCroce, Esq., for the petitioner (Bathgate, Wegener, Wueters & Newman, attorneys)

R. Lane Stebbins, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 1, 1988 Decided: November 23, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Jeannie D. Price, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack and roulette

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floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a blackjack and roulette floorperson in the casino industry. By letter to the Commission, dated November 25, 1987, the Division objected to the application of the petitioner for licensure as a blackjack and roulette floorperson, asserting that the petitioner had been charged with theft of money in that the First Fidelity Bank of South Jersey had inappropriately credited $5,470.81 to the petitioner's checking account, $5,000.00 of which the petitioner withdrew, used for personal expenses, and upon discovering the error, has failed to repay. Based upon this conduct, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on January 15, 1988, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated April 4, 1988, which was received by the Commission on April 5, 1988, the petitioner requested a hearing. On April 11, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on April 15, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for June 3, 1988. On May 26, 1988, the petitioner's father contacted the Office of Administrative Law and requested an adjournment of the prehearing conference as the petitioner was then hospitalized in Las Vegas and was retaining counsel in New Jersey. This request for adjournment was granted and the prehearing conference was rescheduled.

A prehearing conference was held in the matter before Administrative Law Judge Edgar R. Holmes on July 15, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

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

A hearing was held on November 1, 1988, at the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record closed.

THE FACTS

In 1985, the petitioner's then boyfriend was about to consummate a business deal. As such, she asked him for a loan of $10,000. Several days later on May 17, 1985, the petitioner went to the Somers Point Branch of the First Fidelity Bank and checked her checking account balance on a 24-hour automatic teller machine. She had anticipated that her balance would have been approximately $500 as her paycheck is directly deposited in the bank. She found her balance to be in excess of $5,000. She entered the bank and had a bank teller verify the balance in her account. Upon receiving verification of her balance, the petitioner believed that her boyfriend had taken one of her deposit slips and had deposited a portion of the loan into her account. She then attempted to withdraw $5,000 from her account. She was told that she could only withdraw such a large sum from the branch where she had originally opened the account.

The petitioner then went to the Linwood Branch of the First Fidelity Bank as she believed that was where she had opened the account. At the Linwood Branch, the petitioner spoke with Ms. Lockhardt. Ms. Lockhardt again verified the account's balance. The petitioner then asked the branch manager if there was a problem with withdrawing such a large amount. The branch manager indicated that the money could not be withdrawn at that branch as the account had been opened at the Shore Mall Branch. The petitioner then went to the Shore Mall Branch in Pleasantville. The petitioner's balance was again verified by the bank, and the petitioner was then permitted to cash a check for $5,000.

The petitioner had planned to use the $10,000 loan to purchase groceries, clothes for herself and her three children, household furnishings, school expenses, and to pay for other living expenses. Upon withdrawing the $5,000, the petitioner purchased

three sets of matresses with box springs, clothes for herself and her children and paid medical and other bills.

Several days later, the petitioner returned to the bank in order to determine exactly how much had been deposited into her checking account. She was given a list of her deposits which included a deposit for $5,470.81 which had been made on May 15. She thought that that was an odd amount, and she asked if there had been any additional funds deposited as she was expecting a $10,000 deposit. At this point in time she was angry at her boyfriend, believing that he had not deposited the full $10,000; however, he was then out of state on business and she could not contact him.

Two months later, a bank security officer requested the petitioner to come to the bank to speak with her regarding her checking account. At this meeting, the security officer informed the petitioner that the money had been deposited erroneously to her account; however, he offered no proof of that assertion. The petitioner asserted that the money was hers and in fact expected more money to be deposited to her account.

In fact, on May 15, 1988, a First Fidelity bank employee had erroneously credited $5,470.81 to the petitioner's account. The First Fidelity bank had merged with the Burlington County Trust Company. The Burlington County account numbers had ten digits and the First Fidelity account numbers had seven digits. First Fidelity had received a pre-notification of a direct deposit to the account of Roger Moore with a ten-digit number. Believing it was a "bad number," a bank employee, in an effort to determine the correct account number for Roger Moore, looked at the wrong list. She looked at the list for payroll direct deposits, saw the petitioner's direct deposit from the Tropicana and believing it was the correct account, listed the petitioner's account number for Mr. Moore's deposit (R-2).

A few days after speaking with the bank security officer, the petitioner contacted her boyfriend and he informed her that he had not deposited any money into her account. The petitioner then realized that the money had been erroneously deposited into her account. The petitioner then offered to enter into a repayment schedule with the bank; however, the bank officer refused as he wanted the petitioner to repay the entire amount immediately. The bank therefore initiated criminal charges.

On August 13, 1985, the petitioner was arrested and was charged with theft of mislaid property, in violation of N.J.S.A. 2C:20-6 (R-1). That same day, the bank notified

the petitioner it was closing her account and retaining her account balance as payment against the $5,470.81.

On November 25, 1985, just prior to trial, the attorneys representing the parties in the case agreed to settle the matter. The bank agreed to withdraw the charges and the petitioner agreed to repay the bank at a rate of $265 per month. The first payment was to be received one month later.

The petitioner failed to make a timely payment. During this period, the petitioner was not working because she was on disability. Her first payment was not made until February 1986. This check was returned for insufficient funds. The petitioner went to the bank to find out why the check was dishonored. A search of the bank records revealed that a check had cleared which was not in numerical order. It was discovered that the petitioner's daughter's boyfriend, who was living at the petitioner's house, had stolen a check from the back of petitioner's check-book and had withdrawn money from the petitioner's account without her knowledge.

In March 1986, the petitioner again issued a check to the bank pursuant to her repayment agreement, and again it was returned for insufficient funds. Again the petitioner went to the bank to determine why the check was returned for insufficient funds. It was determined that a large withdrawal had been made from the petitioner's account through a 24-hour automatic teller machine. The petitioner had made no such withdrawal and requested the bank to further investigate the matter. The bank replayed the video recording of the automatic teller and it was discovered that the petitioner's daughter's boyfriend had again surreptitiously withdrawn money from the petitioner's account.

After the first check incident, the petitioner demanded that her daughter's boyfriend move out of the house. Her daughter was pregnant and neither her daughter nor her boyfriend had insurance so the petitioner was paying their bills. The boyfriend admitted that he had taken the money but stated he had been threatened because he owed money to others. The petitioner decided not to pursue the matter for the sake of her daughter.

After the second incident, the petitioner was torn between the boyfriend, her daughter, and the impending birth of the baby. Again the petitioner decided to do

nothing. She hoped that her daugher would leave her boyfriend after the birth of the baby. Eventually, after the petitioner's daughter's boyfriend stole from her a third time, petitioner did kick him out of her house.

The petitioner was born and raised on Long Island, New York. She quit high school in 1966 after completing the eleventh grade. She subsequently earned her G.E.D. and completed two years of college at night. In 1969 she got married and became employed as a secretary at Skytower. In this job she was bonded as she handled large sums of money. In 1970 and 1971, the petitioner worked for a collection agency. She then had a baby, remained unemployed, and the couple moved to Somers Point, New Jersey. In 1973, the petitioner entered Atlantic County Community College with a major in accounting. She got a job as a bookkeeper at Mr. Tire. In either 1977 or 1978, she entered the casino industry as a roulette dealer at the then Brighton. From August 1979 until October 1980, the petitioner was a dealer at the Sands. In 1980, the petitioner was licensed as a roulette floorperson by the Commission, and in October she became employed as such at the Tropicana Hotel Casino. In 1983, the petitioner also became licensed as a blackjack floorperson by the Commission.

In 1984, the petitioner was bitten by sand fleas while she was at the Tropicana. She was improperly treated and she developed a systemic infection. She has since suffered multiple infections and contracted pneumonia, bronchitis, pleurisy and bronchial sinusitis. She developed lesions on her hands and ankles, which spread over her entire body. Evidently, her original medication masked the symptoms of her actual illness. As such she was not properly treated. The petitioner experienced numerous illnesses over the next several years. Throughout this period, the petitioner has suffered from severe depression. At the time she was to begin making repayments to the bank, she was on a leave of absence for her illness. She was terminated from her employment in May 1986 because of her long-standing illness. She was placed on disability, and she had no income until her disability checks started to arrive.

In December 1986, her disability benefits were exhausted. She contacted a friend in Las Vegas, who arranged for her transportation to Nevada. The petitioner met with John Chiero, president of the Tropicana in Las Vegas, who hired her as a floorperson. Her illness, however, persisted and she was again placed on disability. She is currently on disability and on medical leave from the Tropicana in Las Vegas until May 1, 1989.

A portion of the $5,000 in question in this case was used to pay some of the petitioner's enormous medical bills. The petitioner's medical bills currently total over $60,000. This includes a five-week period of hospitalization with costs totaling over $40,000.

The petitioner is currently residing in Ocean City, New Jersey, with two of her children, ages 18 and 16, and with her estranged husband. Her 21-year-old daughter has now moved out and lives with her boyfriend (now husband) and their baby. The petitioner intends to complete repaying the bank when she gets reestablished.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in substantial regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in substantial respects.

FINDINGS OF FACT

1. In early May 1985, the petitioner's boyfriend offered to loan her $10,000 based upon a business deal he was about to consummate.

2. On May 15, 1985, the First Fidelity Bank erroneously credited $5,470.81 to the petitioner's checking account.

3. After bank personnel verified the petitioner's bank balance nine times on May 17, 1985, and believing that her boyfriend deposited money into her account, the petitioner withdrew $5,000 from her account.

4. The petitioner initially insisted the money was hers; however, after learning of the error, she offered to repay the bank over time as she had already spent the money for household necessities and to pay bills. The bank refused, wanting repayment in full, and initiated criminal charges against the petitioner.

5. On November 25, 1985, the bank agreed to withdraw the charges, and the petitioner agreed to repay the amount over time.

6. The petitioner's first repayment check was two months late and was returned for insufficient funds as her daughter's boyfriend had stolen money from her account.

7. The petitioner's second repayment check was also returned for insufficient funds as her daughter's boyfriend had again stolen money from her account.

8. In 1984, the petitioner was bitten by sand fleas and she suffered a systemic infection. She has yet to recover from this systemic infection. She has suffered mutiple infections and contracted pneumonia, bronchitis, pleurisy and bronchial sinusitis. She has developed lesions, which have spread over her entire body, and she has suffered from severe depression.

9. Since 1984, the petitioner has been on and off disability and has had few periods of employment.

10. In December 1986, the petitioner was hired to be a floorperson by the president of the Tropicana Las Vegas.

11. The petitioner's medical bills currently total over $60,000.

12. The petitioner has had to support herself, her three children, and her oldest daughter's boyfriend.

13. Up until the time of her illness, the petitioner had been continuously employed, and she was a good employee.

14. The petitioner has not yet repaid the bank, but she intends to do so once she gets reestablished.

APPLICABLE LAW

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

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or

> control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

> a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
>
> b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> . . . .
>
> e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

DISCUSSION

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

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Price was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the

Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure udner section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, at 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It appears that the petitioner's misconduct was a mistake and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances mitigate the seriousness of the misconduct. In addition, the petitioner has accepted responsibility for her misconduct; however, she has not been able to repay her debt. She experienced a severe medical problem in 1984 which devastated her life. She has suffered periods of extreme depression as a result of her medical condition. She fears a return to the casinos because of the embarrassment she feels she will endure as a result of the lesions which cover her body. She has not really been able to work since. At times she has been on disability. She has had brief periods of employment; however, even during these periods, her debts were such that she could not make restitution. The fact that the president of the Tropicana in Las Vegas personally hired her for a supervisory position in late 1986 speaks well of her good character, honesty and integrity. I have little doubt that the petitioner is a person of good character, honesty and integrity. She appears to be a good person and a person who might be suitable for licensure in this state; however, as indicated above, it is incumbent upon her to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to her good character, honesty and integrity. The petitioner presented no evidence at the hearing other than her own testimony. She presented no character witneses, no letters of reference, no job performance evaluations, no certificates of accomplishment or recognition; nothing which would enable me to say that she has established by clear and convincing evidence, her good character, honesty and integrity. Unfortunately, based upon the above, I cannot say

that Ms. Price is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corporation.

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

DISPOSITION

It is **ORDERED** that the petitioner's application for the renewal of a casino employee license be **DENIED.**

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

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

23 November 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11-28-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 30 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter to petitioner's attorney re: repayment to the First Fidelity Bank, dated October 6, 1986

P-2 Letter of First Fidelity Bank, dated August 13, 1985

For the Respondent:

R-1 Complaint against petitioner, dated August 13, 1985

R-2 Supplemental Report of the Atlantic County Prosecutors Office, dated September 20, 1985

R-3 Statement of activity of petitioner's bank account as of June 3, 1985

WITNESSES

FOR THE PETITIONER:

Jeannie D. Price, the petitioner

FOR THE RESPONDENT:

Jeannie D. Price, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-128
APPLICATION NO. 4032-11
OAL DOCKET NO. CCC 1232-88
ORDER NO. 89-4-5

APPLICATION OF PEDRO RAMOS, JR.

FOR A CASINO KEY EMPLOYEE LICENSE — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 25, 1989,

IT IS on this 6th day of April 1989, ORDERED that the initial decision is modified as follows:

> To reject the ALJ's finding of good character. In view of the determination that the offense is a statutory disqualifier under N.J.S.A. 5:12-86c(1) and 86g, no decision on this issue is necessary.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1232-88
AGENCY DKT. NO. 88-EA-128

PEDRO L. RAMOS, JR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Pedro L. Ramos, Jr., petitioner, pro se
Norma L. Stancil, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: August 5, 1988 **Decided: November 4, 1988**

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) alleging, among other things, that petitioner Pedro L. Ramos, Jr., committed an offense which constitutes a statutory disqualification for petitioner to hold a key casino employee license under the Casino Control Act (Act). The Division, therefore, objects to the issuance of such a license to petitioner.

PROCEDURAL ASPECTS

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The Division filed its objection letter with the Commission on December 18, 1987. On February 9, 1988, petitioner requested a hearing. On February 26, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 21, 1988 before Administrative Law Judge Stephen W. Thompson at which, among other things, the issues to be resolved were agreed upon and set forth in addition to the date, time and place for the conduct of the hearing. The hearing was held on July 14, 1988, at the Somers Point, New Jersey, Municipal Court. Petitioner requested and was granted leave to submit character references. The record closed on August 2, 1988 with receipt of the Division's submission in response to petitioner's character references. Thereafter, extensions for the execution of the instant initial decision were requested and granted.

ISSUES

The issues to be determined by this administrative tribunal, as agreed upon at the prehearing conference held on April 21, 1988, are these:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4 theft by deception.

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

BURDENS OF PROOF

A. The Division has the burden of proving the elements of the alleged statutory disqualifying offense by a preponderance of the credible evidence.

B. Petitioner has the burden of establishing proof of his good character, honesty and integrity by the standard of clear and convincing evidence.

UNCONTESTED FACTS

Based upon the testimony and exhibits marked into evidence at the hearing, the following facts are uncontested and are hereby adopted as **FINDINGS OF FACT** in this matter:

During the period August and October 1982, petitioner was in receipt of Unemployment Insurance Benefits (UIB) while he was employed by the Deerpark Baking Company, Hammonton, New Jersey. Petitioner was in receipt of six weekly UIB checks in an amount of $122.00 each during the period in which he was employed one to four days per week. Petitioner was subsequently cited for an UIB overpayment of $118 for the week ending March 9, 1985. As of July 7, 1988, petitioner's liability was as follows:

Principal	$ 850.00	
Penalty	183.00	
Interest	229.54	
Total	$1,262.54	
Paid	612.00	
Balance	$ 650.54	(R-12)

Petitioner does not deny he collected UIB while employed and not entitled to the benefits. He contends, however, that the offense occurred a long time ago when he had financial obligations in the form of child support payments, among others. It is his intention to satisfy the UIB claims against him as of August 15, 1988.

The record demonstrates that petitioner was issued a Notice of Hearing by the Department of Labor and Industry, Division of Unemployment and Disability Insurance, Bureau of Benefit Payment Control (Bureau) dated December 16, 1983. The Notice asserted that petitioner had been in receipt of UIB between August 22, 1982 and October 2, 1982 and that he may be subject to make a refund,

disqualification and/or prosecution on its claim of alleged overpayments. A hearing was conducted by the Bureau on January 4, 1984 at which petitioner admitted receipt of UIB during his employment with Deer Park Baking Company. On or about April 2, 1985, petitioner was issued a notice by the Bureau that he had received an overpayment of $915 while employed by Deer Park and a determination that the overpayment was due and owing; that a fine of $183 was assessed; and, that petitioner was disqualified for benefits for a period of one year from April 2, 1985. On or about April 26, 1985, the Division of Unemployment and Disability Insurance filed a Certificate of Debt with the Clerk of the Superior Court of New Jersey against petitioner in the amount of $915. On May 10, 1985, the Superior Court entered a judgment against petition for the said amount. Petitioner made no effort to satisfy the claims until on or about April 16, 1987. Petitioner was neither charged criminally nor indicted for the offense of collecting UIB to which he was not legally entitled.

On or about April 20, 1987, petitioner executed an application and Personal History Disclosure Form-1 (PHD) for a key employee license. Prior thereto, on or about April 16, 1987, petitioner entered into an agreement with the Bureau to refund the UIB overpayments, fines and interest in installment payments of $100 per month until the full claims against him were satisfied. Petitioner made payments of $100 in the months of April, May, June, September 1987 and February, March 1988. Petitioner failed to comply with the terms and conditions of the April 16, 1987 agreement.

Petitioner's employment history shows that he was engaged in a variety of unskilled jobs, many of which were part-time or seasonal positions commencing on or about July 1979. Petitioner was employed as a porter by the Greate Bay Hotel and Casino, trading as the Sands, from July 1980 until March 1983. He was terminated from the Sands for tardiness and absenteeism. Petitioner's subsequent association with the casino industry occurred in May 1985 at which time he was employed at the Trump Castle Hotel and Casino as a hard count attendant. He received two written warnings while employed by Trump Castle, one of which was for tardiness and absenteeism. In March 1987, petitioner resigned from the Trump Castle to take a better paying position with the Showboat Hotel/Casino as a hard count attendant.

In July 1987, petitioner was promoted to Dual Rate in which he performed supervisory duties two times per week in the Hard Count Department at the Showboat. Petitioner's employee performance appraisals with the Showboat shows one evaluation period where he was rated as "Fully Acceptable" and two where he had achieved a "Superior" status.

DISCUSSION AND CONCLUSIONS

The Division contends that petitioner committed a per se disqualifying offense, pursuant to N.J.S.A. 5:12-86c(1), when he collected UIB to which he was not entitled. Section 86c provides that the Commission shall deny a casino license to any applicant who has been convicted of any of the offenses listed under subsection (1), which includes N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree). The herein record demonstrates that petitioner was not convicted of a theft offense, however, section 86g of the Act provides that:

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

The Division asserts that the offense which petitioner is alleged to have committed is theft by deception as found at N.J.S.A 2C:20-4 and provides as follows:

> A person is guilty of theft is he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The grading of theft offenses in the New Jersey Code of Criminal Justice is found at N.J.S.A. 2C:20-2b. where it states a subsection (2) that:

> Theft constitutes a crime of the third degree if:
> (a) The amount involved exceeds $500.00 but is less than $75,000.00;

The amount to which petitioner admits he received in UIB and to which he was not entitled equaled $915. Thus, petitioner committed an act comparable to an N.J.S.A. 2C:20-4 offense of the third degree. *State v. Moore*, 158 N.J. Super. 68 (App. Div. 1978).

I **CONCLUDE**, therefore, that the Division has carried its burden of proof, by a preponderance of the credible evidence, to show that petitioner committed a per se disqualifying offense under Section 86c(1) of the Act even though it was not prosecuted under the criminal laws of this State, as provided by N.J.S.A. 5:12-86g. Consequently, petitioner is not eligible to hold a casino key employee license and, accordingly, his application must be **DENIED**.

There is no opportunity for an applicant for a casino key employee license to demonstrate rehabilitation from a per se disqualifying offense which has occurred within ten years preceding the application. That opportunity is only extended to casino employee and casino hotel employee registrants pursuant to sections 90(h) and 91(d) of the Act . *Davis v. Div. of Gaming Enforcement* 8 N.J.A.R. 301, 308. A casino key employee license applicant is, however, afforded the opportunity to demonstrate his/her good character, honesty and integrity which is required for licensure under section b (2) of the Act.

> N.J.S.A. 5:12-89b(2) provides, in pertinent part, that:
>
> Each applicant for a casino key employee license shall product such information, documentation and assurances as may be required to establish by clear and convincing evidence of the applicant's reputation for good character, honesty and integrity. Such information

> shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application...

The burden of proof with respect to sections 89b(1) and (2) lies with petitioner (applicant) by the standard of clear and convincing evidence. This standard of proof was articulated by the Commission in its opinion in *In the Matter of the Application of Resorts International Hotels for a Casino License*, Casino Control Commission (February 26, 1979) at pp. 5-6, where it said:

> ...The clear and convincing evidence requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt, clear and convincing evidence should produce in the mind of the (fact finder) a firm belief or conviction as to the truth of the matters sought to be established...

In *Resorts* at 8, the Commission held that an unfavorable reputation, which raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key factors for consideration.

The facts in this matter demonstrate that petitioner committed the offense before his twenty-third birthday when he was irregularly employed in seasonal and part-time jobs. Petitioner has never attempted to hid the fact that he did, in fact, collect UIB to which he was not entitled. It is equally true that petitioner made no effort to repay claim or judgment against him prior to his application for a casino key employee license.

It is apparent that petitioner has matured with the passage of time and by assuming more than routine responsibilities in his position as a supervisor in the Showboat's Hard Count Department. Petitioner's performance as a "superior" employee as reflected on two of three Employee Performance Appraisals, speaks to a change in his employment behavior of the past where he was terminated for tardiness and absenteeism. Petitioner is now considered a very dependable worker

(P-3) who completes all job assignments with the utmost accuracy and thoroughness (P-2) and is a valuable employee with good problem solving abilities (P-4).

I **FIND** and **CONCLUDE** that petitioner has demonstrated, by clear and convincing evidence, that he does possess the requisite good character, honesty and integrity for licensure as a casino key employee.

Notwithstanding his showing of good character, honesty and integrity, the fact remains that petitioner committed a per se disqualifying offense. Without the opportunity to show petitioner's rehabilitation, this tribunal is constrained to grant the Division's requested relief and deny petitioner's application for a casino key employee license.

ORDER

Accordingly, it is **ORDERED** that the Application of Pedro L. Ramos, Jr., for a casino key employee license be and is hereby **DENIED**.

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

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

4 November 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11-10-88
DATE

Marianne Farone
CASINO CONTROL COMMISSION

NOV 10 1988
DATE

Mailed to Parties:

Ronald L. Tarpa K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Pedro L. Ramos, Jr.

For the Respondent:

Pedro L. Ramos, Jr.

EXHIBIT LIST

For the Petitioner:

P-1 To Whom It May Concern by Mary Edwards, Count Room Manager, July 20, 1988
P-2 Showboat Employee Performance Appraisal January 19, 1988
P-3 Showboat Employee Performance Appraisal, June 2, 1987
P-4 Showboat Employee Performance Appraisal, July 19, 1988
P-5 Memo from Edwards to Hard Count Employees re: Promotion, June 10, 1987
P-6 Memo from Edwards to Hard Count Attendants re: Promotion, July 21, 1987
P-7 To Whom It May Concern by Mary Edwards
P-8 To Whom It May Concern by Jay Velasquez
P-9 To Whom It May Concern by Jay Velasquez
P-10 To Whom It May Concern by Susan A. Marino
P-11 To Whom It May Concern by Robert Lee
P-12 To Whom It May Concern by Maria Rivera
P-13 To Whom It May Concern by Pedro A. Claudio
P-14 To Whom It May Concern by James Borrero
P-15 To Whom It May Concern by Eugene R. McClure, Jr.
P-16 To Whom It May Concern by Michael Borrero
P-17 To Whom It May Concern by Gerald P. Melora
P-18 To Whom It May Concern by Hector Suarez, Investigator, Office of Public Defender
P-19 Letter, July 20, 1988 by David Acosta

For the Respondent:

R-1 Wage Information Inquiry, April 29, 1982
R-2 Notice of Hearing, Department of Labor and Industry, dated December 16, 1983
R-3 Record of Hearing, January 4, 1984
R-4 Determination and Demand for Refund, April 2, 1985
R-5 Schedule of Overpayments
R-6 Certificate of Debt - $915.
R-7 Request for Refund with attached Schedule of Overpayments
R-8 Formal Installment Arrangement, April 16, 1987
R-9 Computer print-out of Ramos debt and repayment schedule
R-10 Payment Records by UIB to Ramos, May 15, 1982 through March 24, 1983
R-11 Letter Nov. 30, 1987 to Commission

R-12 Letter from Department of Labor which shows that Ramos owes balance of $650.54 includes interest, fines and penalties

JOINT EXHIBIT

J-1 April 20, 1987 - Application for Key Employee License

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-105
ORDER NO.: 89-14-21-A
OAL DOCKET NO. CCC 174-89
(ON REMAND CCC 8473-87)

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

Complainant,

v.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

ORDER

A Stipulation of Settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the Stipulation of Settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 29, 1989, and April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Resorts International Hotel, Inc. (Resorts) pay a civil penalty of $2,176.25 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to the Stipulation of Settlement, Resorts contribute a sum not less than $19,586.25 to the Atlantic Mental Health Center, Inc.; and

IT IS FURTHER ORDERED that a letter of reprimand be issued to Resorts for violating N.J.S.A. 5:12-119(b).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 174-89
(On Remand CCC 8473-87)
AGENCY DKT. NO. 88-105

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
RESORTS INTERNATIONAL
HOTEL, INC.,
Respondent.

Katherine A. Smith and Mitchell A. Schwefel, Deputy Attorneys General, for the petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Edward Suski, Jr., Esq., for the respondent, Resorts International Hotel, Inc.

Record Closed: January 31, 1989 Decided: February 15, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates Resorts International Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on October 6, 7 and 8, 1986, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Resorts International Hotel, Inc. (Resorts) filed an Answer to the complaint on November 9, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honroable Richard Voliva. The matter was originally scheduled for hearing on June 30, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 21, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 21, 1988.

The matter was remanded to the OAL for further proceeding by order of the Commission on November 3, 1988. On January 3, 1989, the parties submitted another proposed settlement agreement. The record closed on January 31, 1989, upon receipt of the remanded files.

FINDINGS OF FACT

The Division and Caesars have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidence by their execution of the settlement agreement.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSION OF LAW AND ORDER OF DISPOSITION

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

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

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

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

DATE — **STEPHEN W. THOMPSON**, ALJ

Receipt Acknowledged:

DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 21 1989

DATE — OFFICE OF ADMINISTRATIVE LAW

lar

LIST OF EXHIBITS

None

LIST OF WITNESSES

None

DONALD R. RELSOLE
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
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State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

Edward Suski, Jr., Esquire
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North Carolina Avenue and the Boardwalk
Atlantic City, New Jersey 08401
(609) 340-6116

Attorney for Respondent,
Resorts International Hotel, Inc.

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STATE OF NEW JERSEY
CCC DKT. NO. 88-105
OAL DKT. NO. CCC-08473-87

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. RESORTS INTERNATIONAL HOTEL, INC., Respondent.	STIPULATION OF FACTS AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Donald R.

Belsole, Acting Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Assistant Attorney General and Edward Suski, Jr., Esq., Counsel for Respondent, Resorts International Hotel, Inc., the parties hereby agree to stipulate as follows for purposes of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "Division"), now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., hereinafter referred to as "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent Resorts International Hotel, Inc. (hereinafter referred to as "Resorts") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at North Carolina Avenue and the Boardwalk, in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Resorts is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in

accordance with the Act and the regulations promulgated thereunder. The said license was issued to Resorts effective on February 26, 1979, and renewed on an annual basis thereafter. Resorts has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 28, 1978, at which time Resorts was the holder of a temporary casino permit. Said Certificate of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et, seq., and the regulations promulgated thereunder.

5. On October 6, 1986, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Resorts' casino room and gambled in Blackjack Pits B6 and A5. On October 7, 1986, Debra Kim Cohen entered Resorts' casino room and gambled Blackjack Pit J11. On October 8, 1986, Debra Kim Cohen entered Resorts' casino and gambled in Blackjack Pits J04 and H04. Over the course of this three day period, Debra Kim Cohen was observed playing blackjack by Resorts' casino floor personnel and her blackjack play was rated by Resorts' casino floor personnel. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B are true and correct copies of Resorts' player rating slips, for the dates indicated above, for Debra Kim Cohen.

6. As a result of her rated blackjack play, Debra Kim Cohen was issued a meal complimentary, valued at $22.65 (twenty two dollars and sixty-five cents), by Resorts' casino personnel on October 7, 1986. As a result of her rated blackjack play, Debra Kim Cohen was issued a second meal complimentary, valued at $9.55 (nine dollars and fifty-five cents), by Resorts' casino personnel on October 9, 1986. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of Resorts' Player Evaluation and Comp History Information computer printout for Debra Kim Cohen.

7. On or about October 5, 1986, Leonard Cohen provided Respondent's Security Department with a photocopy of a photograph of his daughter, Debra Kim Cohen, upon which photocopy was her date of birth, and advised the Security Department that she was a missing person, and, if located, to notify the Atlantic City Police Department. Mr. Cohen stated, in his sworn statement to the Division, that he informed Respondent's Security Department that his daughter was a minor and should not be allowed to gamble in the casino. Respondent's Security Department located Ms. Cohen on October 9, 1986 in the hotel lobby of its facility and notified Leonard Cohen. Attached hereto and made a part of the record hereof as Exhibit D is a true and correct copy of the photocopy Mr. Cohen provided to Resorts' Security Department. Attached hereto and made a part of the record hereof as Exhibit E is a true and correct copy of the sworn statement of Leonard Cohen, taken on June 26, 1987, wherein Mr. Cohen testified that he personally

notified each casino in Atlantic City that his daughter was a minor and should not be permitted to gamble in the casino. Attached hereto and made a part of the record hereof as Exhibit F is a true and correct copy of Resorts International Hotel, Inc. General Incident Report, dated October 9, 1986, relative to the observation of Debra Kim Cohen by Resort's security personnel on October 9, 1986.

8. By letter dated November 25, 1986, and received by Respondent, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Respondent that Debra Kim Cohen had been rated and provided complimentaries at Resorts' casino and that said activities must cease. Enclosed in Mr. Press' letter was a photograph of Debra Kim Cohen. Subsequent to the receipt of Mr. Press' letter, the Director of Resorts' Security Department, distributed the letter and the photograph of Debra Kim Cohen to all security personnel. Attached hereto and made a part of the record hereof as Exhibits G and H, respectively are true and correct copies of the November 25, 1986 letter from Mr. Press to Resorts and the photograph of Debra Kim Cohen enclosed in the letter. Attached hereto and made a part of the record hereof as Exhibit I is a true and correct copy of the memorandum, dated December 1, 1986, from R.O. Kampert, Resorts' Security Director, to all security personnel.

9. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

> Any licensee or employee of a casino who allows a person under the age at which a

person is authorized to purchase and consume alcoholic beverages to remain in a casino is a disorderly person...

10. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino to gamble on October 6, 7 and 8, 1986, as set forth more fully herein, Respondent Resorts violated N.J.S.A. 5:12-119(b).

11. Further, Debra Kim Cohen entered Resorts', casino and gambled therein, notwithstanding that prior thereto, Leonard Cohen stated, in his sworn statement to the Division, that he notified Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Resorts.

12. Complaint No. 88-105 is the second complaint filed by the Division charging Respondent Resorts with statutory violations stemming from the gambling activities of underage persons in Resorts' casino room. The first such complaint, State v. Resorts International Hotel, Inc., CCC Docket No. 83-405 (Final Order dated July 29, 1985) charged Resorts with violations of, inter alia, N.J.S.A. 5:12-119(a) and N.J.S.A. 9:17B-1b. Respondent was assessed a total monetary penalty of $8,000 (eight thousand dollars) by the Commission with regard to Complaint No. 83-405, $4,000 (four thousand dollars) of which was imposed specifically with regard to the presence and gambling activities of two underage persons in Resorts' casino room. Attached hereto and made a part of the record hereof as Exhibit J and K, respectively, are true and correct copies of the Initial Decision and Final Order in reference to Complaint No. 83-405.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. In recognition of the foregoing, the parties agree that the Commission may impose a letter of reprimand or censure against Respondent Resorts, which letter of reprimand or censure shall be made a permanent part of the file of Respondent Resorts, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

2. The parties further agree that the Commission may impose a civil penalty of up to $21,762.50, against Respondent Resorts, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

3. The parties further agree that to the extent that any civil penalty imposed by the Commission against Respondent Resorts is less than $21,762.50, Respondent Resorts shall contribute the difference between $21,762.50 and the amount of any civil penalty to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

4. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and

void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey

Date: Dec 14, 1988

By _____
Mitchell A. Schwefel
Assistant Attorney General

Date: Dec 15, 1988

By _____
Edward Suski, Esq.
Counsel-Security and Insurance

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120288/12
Dated:

1316

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-233
OAL DOCKET NO. CCC 2024-88
ORDER NO. 89-18-12
(ON REMAND CCC 524-87)

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

Complainant,

ORDER

V.

RESORTS INTERNATIONAL HOTEL, INC. t/a RESORTS INTERNATIONAL CASINO HOTEL AND WILLIAM GALLION

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of April 12, 1989 and May 3, 1989,

IT IS on this 30th day of June 1989, ORDERED that the initial decision is adopted by the Commission; and

IT IS FURTHER ORDERED that Resorts International Casino Hotel pay a total civil penalty in the amount of $56,000; $50,000 for its four violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25(k), and its own internal control

procedures; $1,000 each for two violations of the signature requirement of N.J.A.C. 19:45-1.25(k)(3)(vii); and $2,000 each for two violations of N.J.A.C. 19:45-1.45(a)(3), due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

IT IS FURTHER ORDERED that William Gallion pay a total civil penalty in the amount of $3,000; $500 for each violation of N.J.A.C. 19:45-1.25(k)(3)(vii) and $1,000 for each violation of N.J.A.C. 19:45-1.45(a)(3) and the internal control procedure associated with each, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2024-88
(On Remand CCC 524-87)
AGENCY DKT. NO. 88-233

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RESORTS INTERNATIONAL HOTEL, INC.,
T/A RESORTS INTERNATIONAL CASINO HOTEL
AND WILLIAM GALLION,
Respondents.

Timothy C. Ficchi, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Nicholas Casiello, Jr., Esq., for respondent Resorts International Hotel (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

No appearance by or on behalf of respondent William Gallion

Record Closed: January 27, 1989 Decided: February 17, 1989

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

The Division of Gaming Enforcement ("Division") filed a complaint on February 11, 1988, with the Casino Control Commission ("Commission") charging that the respondents Resorts International Hotel, Inc., t/a Resorts International Casino Hotel and William Gallion, Casino Cage Manager at the respondent hotel and holder of New Jersey casino employee license 00020-11, had violated the established statute and regulations as well as internal control systems regarding the issuance of counter checks to gaming patrons. Specifically, the complaint asserted that Resorts had failed to properly verify the identity of a patron to whom it had

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issued counter checks, checks which in fact had been drawn on another person's credit account. As a result, the complaint asserted that the credit account of Pasquale Chiavatti, which had been opened on January 17, 1982 in the amount of $5,000, had been used by one Michael Spera, on February 9, 1987, at which time Mr. Spera had obtained $5,000 in credit on Mr. Chiavatti's account, credit which was obtained illegally.

The respondents requested a hearing on the complaint. The matter was then transferred to the Office of Administrative Law as a contested case on March 29, 1988. Thereafter, a prehearing conference was held on May 3, 1988 and a prehearing order was issued on May 6, 1988. At the time both Resorts and Mr. Gallion were represented by the law firm of Sterns, Herbert, Weinroth & Petrino. The matter proceeded through discovery and was set for hearing on September 8, 1988. A continuance was granted from that date in order to allow the parties to finalize stipulations as to matters of fact and liability.

On October 13, 1988, Paul M. O'Gara, Esq. of the law firm of Hannock Weisman, of which firm the Sterns, Herbert firm had become a part, moved to be relieved from representation of Mr. Gallion. By order dated November 3, 1988, Mr. O'Gara and his law firm were relieved as counsel and Mr. Gallion was thereafter considered to be representing himself in connection with further proceedings.

The matter was rescheduled for hearing November 10, 1988. Mr. Gallion did not appear at the hearing, nor did anyone appear on his behalf. Since the date of that hearing, there has been no contact from Gallion concerning this matter. As a result, pursuant to N.J.S.A. 5:12-108(d), Mr. Gallion is deemed to have waived his right to a hearing and to have admitted the allegations in the Division's complaint.

The Division and Resorts have entered into a stipulation, which was presented to the ALJ on November 10, 1988. Thereafter, the parties briefed their legal positions with respect to the stipulated facts and liability. The Division's brief was received on December 6, 1988 and the Resorts' brief was received on January 20, 1989. The Division filed a reply brief on January 27, 1988. The record closed on that date.

Pursuant to the stipulations entered into by the Division and Resorts, the essential violations asserted in the complaint have been admitted, leaving the issue of the appropriate penalty in the hands of the administrative law judge and the

Commission. A review of the factual details, drawn from the stipulation, which is attached to this initial decision and made a part hereof, and which stipulations are found as facts in this case, indicates that Pasquale Chiavatti was granted a credit line at Resorts for $5,000 on January 24, 1982. N.J.A.C. 19:45-1.25(k), promulgated by the Commission pursuant to its authority in N.J.S.A. 5:12-101b, establishes procedures which must be followed by a casino licensee and its employees and agents in verifying a credit patron's identity prior to the patron using the credit line granted by the casino. Amendments to the regulation became operative on September 30, 1985. These amendments specified specific methods of verifying the identity of a credit patron prior to the issuance of counter checks on the patron's credit line. In furtherance of the requirements of these regulations, which will be set forth in a more detailed fashion below, Resorts required its patrons to complete updated credit applications including a signature line which was to be inputed into Resorts' computer system in order to allow the later generation of a computer facsimile of the patron's signature at such time as the patron sought credit on his credit line. Mr. Chiavatti signed his name on the signature line of the updated credit application approximately January 17, 1987.

On February 9, 1987, a patron purporting to be Pasquale Chiavatti requested to draw from Chiavatti's line of credit on four separate occasions in the morning and early afternoon. This individual signed a document known as a Counter Check Request/Comp Request form on each occasion. The parties stipulate that the signature placed on this form was not similar in appearance to the real signature of Pasquale Chiavatti, which was contained in the credit file and used for the computer generated facsimile. However, despite this difference, credit was granted pursuant to each request, in amounts of $1,000, $1,000, $1,000 and then $2,000 each. Resorts' Cage Cashier Sandra Shenk processed the first transaction, Resorts' Pit Clerk Sarah Harvey the second, Ms. Harvey again the third, and the fourth, which was for $2,000, was processed by Pit Clerk Evon Lewis. The parties further stipulate that Ms. Shenk, who was temporarily assigned to work as a pit clerk, processed the transaction using the computer access key of Cage Manager William Gallion. She was not authorized by her position to have access to and to input the same amount or quality of information as Mr. Gallion could as cage manager. As a result of her use of Gallion's key, counter check no. 70209936998, printed for a patron named Harold Frumkin, and counter check no. 70209937005, printed for Chiavatti, actually Spera, both had imprinted on them Gallion's name and identification code, which according to Resorts approved internal control procedures signified that Gallion had compared the patron's signatures on the Counter Check Request/Comp Request

forms with the computer generated facsimile signatures and had also prepared the counter checks. In fact this was not the case, as the work had been done by Shenk.

As a result of the stipulated facts, Resorts acknowledged violating N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25(k) and its own approved internal control procedures "by failing to follow procedures for the cashing of checks exchanged by casino patrons in that the pit clerks who processed the counter checks referred to in paragraphs 16, 20, 24 and 28 of the Stipulation of Facts, supra, failed to properly verify the identity of the patron requested to draw counter checks on the account of Pasquale Chiavatti on or about February 9, 1987." In addition, Resorts acknowledged violating N.J.A.C. 19:45-1.45(a)3 and its own approved internal control procedures:

> [B]y allowing William Gallion's name and identification code to be affixed to documents indicating that Mr. Gallion performed a signature comparison in conformity with the regulations and Resorts' approved internal controls when he had not performed such a comparison.

Finally, Resorts acknowledged that a violation of N.J.A.C. 19:45-1.25(k)3vii had occurred by the use of Gallion's name and identification code to be affixed to the computer prepared counter check nos. 70209936998 and 70209937005, when Gallion had not been the preparer of the documents.

STATUTORY AND REGULATORY PROVISIONS

N.J.S.A. 5:12-99(a)13 provided as of the relevant dates:

> 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.

N.J.S.A. 5:12-101(b) provides:

> b. No casino licensee or any person licensed under this act, and no person acting of 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 a 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 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 any 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.

N.J.A.C. 19:45-1.25(k), as amended by amendments effective September 30, 1985, provides:

> (k) For each Counter Check exchanged at a gaming table, the casino clerk shall:
>
> 1. Verify the patron's identity by either:
>
> i. Obtaining the patron's signature, on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The casino clerk shall sign the form indicating the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.
>
> (1) After the patron's identity has been verified by the casino clerk as required above, the requirements for subsequent

verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by that casino clerk signing a form attesting to the patron's identity before each subsequent Counter Check is exchanged. The form shall include the patron's name and the serial number of the initial Counter Check exchanged by the patron. Such form shall be attached to the accounting copy of the Counter Check prior to forwarding it to the accounting department in conformity with (p) below; or

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license no. thereon. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.

3. Prepare the Counter Check for a patron's signature by recording, at a minimum, on the face of the original and all duplicates of the Counter Check, with the exception of the acknowledgment copy which shall only have recorded on it the game and table number, or in stored data, the following information:

. . .

vii. The signature of the preparer or, if computer prepared, the identification code of the preparer.

Resorts' internal control procedures were amended to incorporate the amendments to N.J.A.C. 19:45-1.25(k). The Commission approved the amended procedures on October 4, 1985. In pertinent part, these provide:

> Prior to the issuance of a Counter Check at the gaming table or the cage for slot credit, the pit supervisor or slot supervisor for slot credit will initiate a Counter Check Request for each Counter Check which will contain the following information:
>
> . . .
>
> The casino clerk will do the standard name search (see appendix) and compare the signature from the Counter Check Request to the digitized signature in the computer. The casino supervisor is not involved in the determination. For slot credit the general cashier will compare the signature on the Counter Check to the digitized signature in the computer. If the signatures are not similar, the patron will be requested to

> produce further identification, in accordance with section 1 of these controls and if this is not satisfactory, Security will be contacted.
>
> When the casino clerk or general cashier has computer verified that the credit request is within the patron's available remaining credit limit, he will prepare a computerized Counter Check with the amount expressed in numerals, patron's name and bank, the game and table number, the current date, and the casino clerk's validation. The validation evidences the comparison of the patron's signature on the Counter Check Request to the digitized signature in the computer. The transaction will also appear as an open item on the Check Bank monitor.

DISCUSSION

In view of the stipulations entered into by Resorts and the failure of Gallion to appear, which results in an admission on his part of the allegations in the complaint as they deal with him, I **FIND** that Resorts violated the provisions of the statute and regulations above cited in accordance with their acknowledgment of such violations. In addition, I **FIND** that Gallion allowed Cage Cashier Sandra Shenk to use his computer access key, resulting in false information being entered on the counter checks 70209936998 and 70209937005, in violation of the "PROCEDURE FOR EXCHANGE OF CHECKS SUBMITTED BY GAMING PATRONS-COMPUTER," the above-quoted portion of the internal control procedures, specifically as the false information evidenced inaccurately that Gallion rather than Shenk had performed the validation. In addition, as to Gallion, I **FIND** that he violated N.J.A.C. 19:45-1.45(a)3 in that the appearance of his name on the counter checks falsely signified that he had prepared and participated in the transaction "to a sufficient extent to attest to the accuracy of the information recorded thereon, in conformity with this regulation and the casino licensee's system of internal accounting control; . . . . He further violated N.J.A.C. 19:45-1.25(k)3vii by allowing his name and identification code to be affixed to the computer prepared counter checks when he was not the preparer of the documents.

PENALTY

N.J.S.A. 5:12-129 permits the Commission to impose a variety of sanctions for violations of the Act or the attendant regulations. Suspension of the operation certificate of the casino is permitted, N.J.S.A. 5:12-129(4) and civil penalties may be imposed up to $50,000, "to punish misconduct and to deter future violations . . ." N.J.S.A. 5:12-129(5).

N.J.S.A. 5:12-130 lists considerations in determining the nature and extent of any penalty:

> In considering appropriate sanctions in a particular case, the Commission shall consider:
>
> a. The risk to the public and to the integrity of gaming operations created by the licensee or registrants;
>
> b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or the regulations promulgated hereunder.
>
> c. Any justification or excuse for such conduct by the licensee or registrant;
>
> d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
>
> g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the Commission and not to a finding of a violation itself.

In this proceeding, the Division requests a $40,000 to $50,000 penalty for issuance of counter checks in contravention of applicable statutory and regulatory provisions. The parties have examined prior decisions of the Commission in an effort to determine the pattern and practice of the Commission in accessing penalties for various types of regulatory violations. In addition, this examination has also highlighted prior proceedings against Resorts, a factor relevant under N.J.S.A. 5:12-130d. Of course, each violation proceeding must be judged on its own merits and on the specific facts of the particular case.

Initially, in this matter, the evident outcome of the failure of the respondents to properly follow the identification procedures and properly examine further

when they determined, or should have determined, that the signature placed by Spera on the document was not similar to that of the computer generated facsimile of Chiavatti's signature, was that Spera was able to fraudulently obtain $5,000 credit from Chiavatti's account. Thus, although it has been noted in argument that this matter did not involve an attempt by the casino to cater to a high roller who was betting extraordinary amounts of money, as was the case in such matters as State v. Boardwalk Regency Corp., 11 N.J.A.R. 29 (1983) or State v. Greate Bay Hotel & Casino, Inc., et al., CCC 5460-83, Commission Decision dated July 25, 1984 ("Sands") and State v. Playboy Elisinore Associates, et al., CCC 4557-83, Commission Decision October 10, 1984 ("Playboy"), the outcome of the respondent's dereliction of its obligations under the statute, regulations and its own internal procedures was to permit the "robbery" of Mr. Chiavatti's credit line by a person who should have reasonably been identified as not being the person who he purported to be. The respondent's brief seems to strongly suggest that because the matter did not involve an attempt by the respondent entity to cater to a high roller that the violations should be considered to be less serious, perhaps less threatening to the integrity of the system, and therefore warranting a substantially reduced penalty. Although the factors outlined in N.J.S.A. 5:12-130 do provide that "in the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant" is a proper consideration, I do not believe that in general the penalties assessed to casino entities for violations by its employees and agents of credit procedures should rest solely, or even primarily, upon the amount of money that was won or lost or wagered or the wealth, or purported wealth, of the player. There is no evidence in this case of the exact financial situation of Mr. Chiavatti or Mr. Spera, but clearly Chiavatti, who had established a credit line and who was not the person who was gambling, was subjected to having his credit line used and in fact totally used up by someone who, in the absence of the evidence to the contrary, had no business using Chiavatti's money. This "looting" of a patron's credit account is extremely serious. The casino, because of its failure to assure compliance with the statute and regulations, became an active participant, although not a knowing one, in this looting. While Mr. Chiavatti may have financial means that would make the lose of $5,000 unimportant, it can hardly be said that a situation such as this is one that is of minimal significance, or that the penalty for violation should be significantly mitigated merely because there is no clear evidence of any catering to a high roller.

Respondent suggests that the penalties to be imposed in this matter should fall in the relatively minimal range of penalties imposed by the Commission in the

Sands and Playboy cases, where a civil penalty of $1,000 was assessed for each of 32 violations in connection with the acceptance of non-conforming cash equivalents, third party checks or casino checks from a group of 32 players known as the Hong Kong group. In that proceeding, the Commission imposed a $50,000 penalty for the acceptance of cash and cash equivalents for a deposit outside the casino cage area. As noted in respondent's brief, the "Commission appears to be most concerned by the fact that there were no Commission or Division personnel present when the transactions involving almost three million dollars were occurring in a hotel conference room." It is correct to say that both this judge, who was the presiding judge at the trial of the Sands matter, and the Commission were quite concerned about the location in which those transactions occurred and the fact that there were no Commission or Division personnel present. However, in assessing the penalty for the acceptance of the cash and cash equivalents outside the casino cage, the $50,000 penalty was not assessed specifically in relationship to the number of checks, or necessarily, the amount of the checks. The real danger was in the acquiescence of the casino and its personnel to allowing these transactions to occur in an area which was not permitted under the regulations. This violation, perhaps more than the specific failures as to the customer deposit forms and the verification of specific cash equivalents, which resulted in a $1,000 per violation civil penalty, was the major concern in the case. Similarly, in this case, while penalties may be assessed for the production of misleading documentation in connection with the placement of Gallion's name on two checks, the central violation was the failure to follow the required procedures with sufficient care to avoid granting credit to an individual who in fact was the not the person who he purported to be. It is the failure to verify the identity of Spera, the failure to look further to see whether in fact he was Chiavatti when the signatures did not appear similar, which is the central and most serious problem with this case. It is on that violation that a substantial penalty is warranted, despite the relatively limited amount of money involved.

For the reasons expressed, I **FIND** that the respondent Resorts must be penalized for its four violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25(k) and its own internal control procedures by failing to follow procedures for the cashing of checks exchanged by casino patrons in that the pit clerks processing the counter checks failed to properly verify the identity of the patron in accordance with the regulations and procedures this violation requires a penalty of $50,000.

In addition, the violation of N.J.A.C. 19:45-1.45(a)3 and the approved internal control procedures by allowing Gallion's name and identification code to be affixed to documents indicating that Mr. Gallion performed a signature comparison in conformity with the regulations and the approved internal controls when he had not made such a comparison, and the violation of N.J.A.C. 19:45-1.25(k)3vii, in allowing Gallion's name and identification code to be affixed to computer prepared counter check no. 70209936998 and 70209937005 when he was not the preparer of these documents, also require monetary penalties. While there is a similarity between these violations, the violation of 19:45-1.25(k)3vii is of a specific regulation requiring the placement of the signature of the preparer or the identification code of the preparer on the counter check. The violation of 19:45-1.45(a)3 involves a slightly broader requirement. That regulation deals with the significance of signatures and specifies that the presence of a signature on prepared documents in the appropriate places indicates who prepared the document, thus creating the paper trail necessary to trace transactions. In this sense that portion of the regulation is very similar to the requirement for the signature of the preparer to appear on the Counter Check required by 19:45-1.25vii. However, the additional portion of 19:45-1.45(a)3 provides that the signer also may have in the appropriate circumstance been the person who "authorized, observed, and/or participated in a transaction to a sufficient extent to attest to the accuracy of the information recorded thereon, in conformity with this regulation and the casino licensee's system of internal accounting control." It is this portion of the regulation which Resorts acknowledges violating. Gallion's signature appearing on the document attested to his having been the signature comparer, when in fact he was not. In this situation it is not only the paper trail as to who prepared the document which is involved, but the attestation and verification aspect as well. In this sense the violation of 19:45-1.45 may be more serious than that of 19:45-1.25(k)3vii.

The penalty for the violation of the signature requirement of N.J.A.C. 19:45-1.25(k)3vii will be established at $1,000 for each of the two checks, for a total of $2,000. For the violation of N.J.A.C. 19:45-1.45(a)3, a violation of $2,000 will be assessed for each of the checks, for a total of $4,000. The violation of the associated internal control procedures for these regulations is included in these assessments.

PENALTY

Based upon the above, it is **ORDERED** that the respondent Resorts shall pay a total civil penalty of $56,000.

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MR. GALLION'S RESPONSIBILITY

Mr. Gallion did not choose to appear and defend the matter. As such, the allegations against him in the complaint are admitted pursuant to N.J.S.A. 5:12-108(d). The complaint specifies as the charges against Gallion the violation of N.J.A.C. 19:45-1.5(a)3 and the internal control procedures and N.J.A.C. 19:45-1.25(k)3bii in connection with the improper preparation of the Counter Checks with Gallion's name and identification number, resulting from the use by Shenk of Gallion's key. A penalty in the amount of $500 for each violation of N.J.A.C. 19:45-1.25(k)3vii and $1,000 for each of N.J.A.C. 19:45-1.45(a)3, and the internal control procedures associated with each, will be assessed against Gallion, for a total assessment of $3,000.

CONCLUSION AND ORDER

Resorts shall pay a civil penalty of $56,000 and Mr. Gallion shall pay a civil penalty of $3,000. These penalties shall be payable within 30 days of the issuance of the final decision of the Casino Control Commission.

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

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

February 17 1989
DATE

JEFF S. MASIN, ALJ

Agency Receipt:

2/21/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 23 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

Joint exhibits:

J-1 Stipulation of Facts and Admissions of Liability, with attached exhibits:

Exhibit A Copy of signature line portion of Pasquale Chiavatti's credit application

Exhibit B Copy of Counter Check Request/Comp Request form, for transaction at approximately 10:19 a.m., February 9, 1987

Exhibit C Copy of Resorts approved internal control for the processing of counter checks

Exhibit D Issuance copy of counter check no. 70209937005

Exhibit E Copy of Counter Check Request/Comp Request form for transaction of approximately 11:51 a.m., February 9, 1987

Exhibit F Copy of the issuance copy of counter check no. 0070209937119

Exhibit G Copy of Counter Check Request/Comp Request form for transaction approximately 12:08 p.m., February 9, 1987

Exhibit H Copy of issuance copy of counter check no. 0070209937148

Exhibit I Copy of Counter Check Request/Comp Request form for transaction approximately 12:22 p.m., February 9, 1987

Exhibit J Copy of issuance copy of counter check no. 0070209937164

Exhibit K Memorandum, dated February 10, 1987

Exhibit L Copy of access to computer, listed by job function

Exhibit M Copy of counter check no. 70209936998

Exhibit N Copy of counter check no. 70209937005

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-299
REGISTRATION NO. 45386-40
OAL DOCKET NO. CCC 8227-88
ORDER NO. 89-22-18

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

Complainant,

v.

GABRIEL RIVERA,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 30th day of June 1989, ORDERED that the initial decision is modified as follows:

> We concur with and adopt the Administrative Law Judge's factual findings and his conclusion that the applicant's conviction of distribution of CDS (cocaine) constituted a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). However, we reject the Administrative Law Judge's recommendation to waive the disqualification pursuant to N.J.S.A. 5:12-91(e). In view of the seriousness and recentness of the offense, the fact that the CDS was sold for profit, and because the respondent tested positive on at least one

urine sample during his participation in the Intensive Supervision Program, a grant of waiver would not be in the interest of justice, but would instead contravene the public policy of the Act. See State v. Hannah, 221 N.J. Super. 98 (App. Div. 1987). Waiver of disqualification in the circumstances of this case, which include continued participation in the Intensive Supervisor Program, can be justified only upon an extraordinary demonstration of rehabilitative efforts and exacting compliance with the terms and conditions of the Intensive Supervision Program. See State v. Mark Phillip Crumble, ___ N.J.A.R. ___, (Commission decision January 6, 1989).

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /sp
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8227-88

AGENCY DKT. NO. 88-299

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

Petitioner,

v.

GABRIEL RIVERA,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Gabriel Rivera, respondent, pro se

Record Closed: March 16, 1989 Decided: April 14, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Gabriel Rivera, is statutorily disqualified from holding casino hotel registration number 45386-40, by virtue of his plea of guilty to distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(2)[1] which are analogous to N.J.S.A. 2C:35-5, a second-degree offense. The respondent asserts rehabilitation pursuant to section 91b of the Act.

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[1]Repealed by L. 1987, c-106, §25, operative July 9, 1987.

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PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on March 24, 1988. Thereafter, the respondent requested a hearing. On October 21, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was filed in the OAL on November 10, 1988. A prehearing conference was held on December 27, 1988 and a hearing was scheduled before the undersigned for March 16, 1989, at the Galloway Township Municipal Building, Absecon, New Jersey. The matter was heard and the record was closed on March 16, 1989.

ISSUES

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 24:21-19a(1) and b(2) which are analogous to N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance — cocaine — a second degree offense.

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

On December 16, 1986, the respondent was indicted in Atlantic Couty, New Jersey Superior Court, and was charged with three counts of possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20(a)(1);[2] three counts of possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20(a)(1) and (2); three counts of distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1); two counts of distribution of a controlled dangerous substance, in violation of

[2]Repealed by L. 1987, c.106, §25, operative July 9, 1987.

N.J.S.A. 24:21-19(a)(1) and (b)(2); one count of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(2); three counts of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1); and three counts of conspiracy, in violation of N.J.S.A 24:21-24.

The circumstances surrounding the December 1986 indictment are as follows: On July 10, 1986, the respondent, Gabriel Rivera, sold a quarter ounce of cocaine valued at $400 to one James Pullan in Atlantic City, New Jersey. Mr. Rivera later discovered after being arrested on November 18, that Mr. Pullan is an undercover police officer with the Egg Harbor Township Police Department. On July 18, 1986, the respondent again sold a quarter ounce of cocaine valued at $400 to Officer Pullan. On October 24, 1986, the respondent made another sale of cocaine to Officer Pullan. On November 13, 1986, the respondent sold one ounce or more of cocaine valued at $1,300 to Office Pullan. On November 18, 1986, the respondent was driven to the Shore Mall parking lot. He met with Officer Pullan and sold him approximately three ounces of cocaine valued at $4,000. At that point, the respondent was arrested and was subsequently indicted in an 18-count indictment.

On February 17, 1987, the respondent retracted his plea of not guilty and entered a plea of guilty to a single count of distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(2).

On June 12, 1987, the respondent was sentenced to five years in jail and was ordered to pay $30 to the Violent Crimes Commission Board. The respondent applied for and was accepted into the Intensive Supervision Program (ISP) and on October 10, 1987, he was released from the Atlantic County Jail.

James Salvaryn, ISP Officer, testified that respondent is a hard working individual with a positive mental attitude. The respondent has performed over 280 hours of community services on projects such as Atlantic County offices, buildings, a covered bridge project, the Belgoville Fire Department and various churches. The respondent is required to perform 16 hours of community service a month, which is usually performed on every other Sunday. The respondent currently has a bank of 20 hours of community service. Mr. Salvaryn further testified that since Mr. Rivera has been on the ISP he has

violated curfew twice. He stated that in over 80 urine samples taken from respondent, only 1 urine sample tested positive for valium. The respondent explained the circumstances surrounding his violations. The two curfew violations occurred shortly after he had been accepted into the ISP. The first one occurred while he was bowling with friends and lost track of time at the Showboat Casino Hotel. The second occurred while he was visiting with his father, who was to drive him back to his apartment. His father's car broke down and the buses were not running frequently at 7:00 p.m. In regard to the "hot" urine sample, which is more troublesome, the respondent explained that he had wrenched his back working on a community service project. Instead of going to a doctor and getting a prescription for a pain killer, he borrowed a valium tablet from his roommate, who had a prescription for the drug. The respondent was not terminated from the ISP because of these violations. His last violation occurred approximately one year ago. It appears that if respondent continues with no further violations, he will most likely be released from the ISP within three or four months. The respondent further testified that he is currently holding down two jobs — one with the Showboat Casino Hotel and the other part-time job delivering dry cleaning with Bendix Cleaners in Ventnor, New Jersey.

The above is believable, documented and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of the application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on June 12, 1987, to distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(2), which are analogous to N.J.S.A. 2C:35-5 (a second-degree offense) (P-2). Based upon the judgment of conviction and petitioner's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one of more section 86 disqualifiers has the opportunity to overcome the

prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mr. Rivera is employed as a food server in the Carousel Restaurant with Tropworld Casino and Entertainment Resort. Prior to that he had been employed as a food service worker at the Atlantis Casino Hotel, starting in February 1982. As such he has numerous contacts with patrons of the casino. Mr. Rivera also appears to be highly valued as an employee (R-1, R-2 and R-3).

Second, the respondent pled guilty on June 12, 1987, to a violation of N.J.S.A. 24:21-19(a)(1) and (b)(2) — distribution of a controlled dangerous substance — which charge analogous to a violation of N.J.S.A. 2C:35-5. Under section 86c(1) of the Act, distribution of a controlled dangerous substance is a statutory disqualifier. Given the fact that five sales at different times were made to undercover agents, these were extremely serious offenses.

Third, the respondent acknowledges his conduct and, in fact, pled guilty to the offense.

Fourth, the respondent's criminal behavior appears to be somewhat repetitive. Not only did he make five different sales to undercover agents, while in the ISP he failed one urine analysis out of a total of eighty tests taken.

Fifth, the respondent committed the disqualifying offense at age 22. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, respondent's disqualifying misconduct involved the commission of offenses between July and November 1986.

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

Eighth, although the respondent has adequately explained his three ISP violations, it is premature to state the Mr. Rivera has established his rehabilitation by clear and convincing evidence. In mitigation, Mr. Rivera's attitude, his excellent work record in the industry and the fact that his ISP officer rates Mr. Rivera's chances of completing the program at between 80 and 90 percent, are positive factors and establish some indicia of rehabilitation. On the other hand, Mr. Rivera's three ISP violations, the fact that he is still in the ISP, but most of all, his five different sales of controlled dangerous substances, are aggravating factors and must be given substantial weight when assessing rehabilitation.

I, therefore, **CONCLUDE** after weighing the mitigating and aggravating factors, that respondent has, at this juncture, failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91(b).

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

Pursuant to N.J.S.A. 5:12-91(e), the Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of the Act and upon a finding that the interest of justice so requires. Respondent's conviction in June 1987 for distribution of a controlled dangerous substance and the fact that Mr. Rivera has failed one urine analysis test while in the ISP persuade me that Mr. Rivera has failed to establish his rehabilitation by clear and convincing evidence; however, respondent's efforts at rehabilitation, his work record in the industry and the testimony of Mr. Rivera's ISP officer supervisor, Mr. Salvaryn, convince me that the public policy of the Act and the interest of justice would be served by granting a waiver to Mr. Rivera concerning his casino hotel registration, pursuant to N.J.S.A. 5:12-91(e).

ORDER OF DISPOSITION

Therefore, it is **RECOMMENDED** that Mr. Rivera be permitted to retain his casino hotel registration, pursuant to N.J.S.A. 5:12-91(e).

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

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

4.14.89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

4/17/89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 19 1989
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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LIST OF WITNESSES

For the petitioner:

Gabriel Rivera

For the respondent:

Gabriel Rivera
James Salvaryn, Officer, Intensive Supervision Program

DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Superior Court of New Jersey, Law Division-Criminal, Atlantic County 1986 Term Indictment Number 86-12-2505-BI

P-2 Judgment of Conviction and Order for Commitment State of New Jersey v. Gabriel Rivera, dated June 16, 1987

For the respondent:

R-1 Letter dated March 13, 1989, from Gregory M. Vonvicin, Grave Shift Manager, Carousel Restaurant, Tropworld Casino and Entertainment Resort

R-2 Letter from Bendix Laundry of Ventnor, New Jersey, dated March 15, 1989

R-3 Letter dated October 17, 1988, from Thomas J. Round, Assistant Manager, Carousel Coffee Shop, Trop World Casino and Entertainment Resort

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-189
APPLICATION NO. 57289-21
OAL DOCKET NO. CCC 8335-87
(CCC 3376-87 ON REMAND)
ORDER NO. 88-26-2

APPLICATION OF DERRICK T. ROWE

FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 29, 1988,

IT IS on this 26th day of January 1989, ORDERED that the initial decision is rejected for the reasons stated by the Commission on the record which are as follows:

> The Commission finds that a review of the rehabilitation and good character, honesty and integrity factors under N.J.S.A. 5:12-90(h) and N.J.S.A. 5:12-90(b) and -89(b)(2), respectively, illustrates that the favorable conclusions reached by ALJ Masin lack support in the record.
>
> The Commission further finds that the administrative law judge's assessment of this applicant's rehabilitation and good character were inappropriately affected by the judge's erroneous imposition on the Division of

Gaming Enforcement (DGE) of the burden which is actually the burden of a disqualified applicant. Once the DGE has established the existence of a disqualifying offense, it is the burden of a disqualified applicant, not the DGE to provide information concerning the nature and seriousness of the offense. (See N.J.S.A. 5:12-90(h)(2)), as well as other factors to demonstrate clear and convincing evidence of rehabilitation, N.J.S.A. 5:12-90(h).

Further, an applicant has the burden, pursuant to N.J.S.A. 5:12-90(b) and -89(b)(2), of establishing by clear and convincing evidence that he possesses good character, honesty and integrity.

The Commission finds that the record contains scant evidence of Mr. Rowe's rehabilitation and good character. The applicant's presentation is insufficient to constitute clear and convincing evidence of his rehabilitation to overcome the disqualification established by his conviction on January 8, 1987, in Pennsylvania, for indecent assault, in violation of 18 P.S. 3126, which the ALJ appropriately found equivalent to a violation of N.J.S.A. 2C:14-2(b), sexual assault, a crime of the second degree and a disqualifying offense under N.J.S.A. 5:12-86(c)(1); and

IT IS FURTHER ORDERED that the application of Derrick T. Rowe is denied substantially for the reasons stated herein; and

ORDER NO. 88-26-2

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8335-87
(ON REMAND CCC 3376-87)
AGENCY DKT. NO. 87-EA-189

DERRICK T. ROWE,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Derrick T. Rowe, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: April 8, 1988 Decided: May 5, 1988

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

Derrick T. Rowe applied to the Casino Control Commission ("Commission") for licensure as a casino employee. On March 23, 1987, the Division of Gaming Enforcement ("Division") filed a letter with the Commission objecting to the licensure. Thereafter, Mr. Rowe requested a hearing on April 24, 1987 and the matter was transferred to the Office of Administrative Law as a contested case.

A prehearing was held before Honorable Stephen W. Thompson on July 23, 1987 and a prehearing order was issued on July 27. The case was scheduled for hearing before

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Judge Thompson on October 2, 1987. On that date, Mr. Rowe failed to appear and Judge Thompson ultimately issued an initial decision/abandonment. The Commission remanded the matter for hearing by order of December 9, 1987. The case was then heard before Honorable Jeff S. Masin, ALJ at the Bellmawr Municipal Court on April 8, 1988. The record closed on that date.

ISSUES

The prehearing order established the issues for consideration at the hearing as whether the petitioner possessed the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within Section 90b. At the time of the hearing, the deputy attorney general moved to amend the prehearing to include the issue of whether the respondent had been convicted of a disqualifying act pursuant to newly amended Section 86c(1) of the Casino Control Act ("Act"). Specifically, the Division contended that Mr. Rowe had been convicted of a violation of the criminal code of the Commonwealth of Pennsylvania which violation was equivalent to a violation of N.J.S.A. 2C:14-2, a crime of the second or third degree and thus an automatic disqualifying offense. The motion to amend the prehearing order was granted.

EVIDENCE

The Division's evidence consisted of a Bill of Information filed in the Court of Common Pleas of Montgomery County, Pennsylvania.[1] This document charged Mr. Rowe with four separate violations of Pennsylvania law. Specifically, he was charged with "on July or August 1983 and/or divers times during the" last two years (1) having engaged in sexual intercourse with one F.H., alleged not to be his spouse and to be less than 14 years of age; (2) corrupting the morals of a minor less than 18 years of age, he being 18 years or above; (c) engaging in sexual intercourse with Ms. H. by "forceable compulsion or by threat by forceable compulsion, and (b) "unlawfully have(ing) indecent contact with F.H., not his spouse . . . without the consent of the other person." The charges, which are statutorily identified as statutory rape, corruption of minors, rape and indecent assault were the subject of a criminal trial held on January 6, 1987. According to the records of

[1]The number of the information apparently indicates that it was filed in 1984, although it is undated.

the court, the jury convicted the respondent of the indecent assault charge and acquitted him of the statutory rape and corruption of minor charges. In addition, the court granted a motion to demurr as to the rape charge. Thus, the respondent was convicted only of the indecent assault charge.

According to the testimony of Derrick T. Rowe, as a result of his conviction for unlawful indecent contact, he was sentenced in May 1987 to 46 days in jail, with credit for that amount already served prior to the trial, and no additional jail sentence. He was placed on probation, the exact length of which he was uncertain of except that he believed it was for 18 months and would terminate in 1989.

The Division presented no other evidence concerning the matter.[2] Mr. Rowe testified that he was born in September 1953. In 1983 he was involved in a relationship with the mother of F.H. At the time, the girl, as best as he knew, 11 years old. He was living with the child's mother and the child was often left in his care when the mother was out. However, he insisted that at the time of the alleged incidents, which are stated in the Bill of Information as being in "July or August 1983 and/or divers times" during "last two years," presumably prior to the date of the information, which document carries no specific date, he was not living with the child's mother. He said that the charges against him resulted from some allegations made by the grandmother of the child. Mr. Rowe insisted that he had done nothing improper at all in connection with the child and had no improper sexual contact or relationship with her. He explained that at the time of the trial the jury returned, at 10:30 at night, and that their verdict appeared to be the result of confusion. In fact, an examination of the court record shows that the jury returned at 9:30 p.m. on January 8, 1987.

Mr. Rowe is now 34 years old and has been unemployed since October 1987. Before that he was employed with ARA Services in Princeton in the Forrestal Village Shopping Mall as a cleaner. Prior to that he worked in the casino industry from August through October 1984 as a computer operator at the Claridge Hotel Casino. He left work because he had been tardy several times due to his long commute.

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[2]The Division's letter of objection of March 23, 1987 alleged that the victim was "mentally deranged and incapable of consent." The Division presented no evidence concerning the victim's mental state. Mr. Rowe stated that the girl was supposedly "upset" due to some previous assault upon her, unrelated to him. Of course, as an 11-year-old she could not have consented under any circumstances.

Mr. Rowe is the father of four children who he supports when he is working. Although he does not live with the mother, he babysits for the children.

Frances Reynolds testified as a character witness for the applicant. She met Mr. Rowe three years ago during their mutual employment at Arco Chemical Company. Mr. Rowe was a temporary employee. She noted that he had good work habits and was punctual and performed a "good job." He was pleasant, and a good worker. She was aware that this was his reputation among fellow employees. On cross-examination, she acknowledged that she was unaware of the criminal matters referred to above. She denied any social relationship with Rowe.

DISCUSSION

(a) Disqualifying Offense

Pursuant to the Act, the burden of establishing qualification for licensure is on a licensed applicant. Mr. Rowe bears the burden in this case of establishing his good character, honesty and integrity by clear and convincing evidence. The Division, which objected to his licensure, has argued that Mr. Rowe has been convicted of a statutory disqualifying offense. Logic would seem to dictate that in such a circumstance, where the Division believes that its evidence shows a conviction, the Division does bear some responsibility for bringing forward to the Commission proof of the conviction. Although the applicant, in testifying first, might not refer to the conviction the Division would certainly would have to do so, either through cross-examination of the applicant, or by direct evidence on its case. Here Mr. Rowe has acknowledged the conviction and the Division has supplemented his testimony by presenting the Bill of Information.

As was explained to Mr. Rowe at the hearing, despite the fact that he testified that he never had any sexual contact with this child, it is incumbent upon this tribunal and the Commission to accept the verdict of the Court of Common Pleas of the Commonwealth of Pennsylvania and conclude that Mr. Rowe was indeed guilty of committing an indecent assault upon F.H. The Constitutional requirement for full faith and credit demands that this body not deny the validity of the conviction. Thus, Derrick Rowe stands before this body as convicted.

18 P.S. 3126, the provision of Pennsylvania law entitled Indecent assault, states:

> A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him is guilty of indecent assault, a misdemeanor of the second degree, if:
>
> (1) He does so without the consent of the other person;
>
> (2) He knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
>
> (3) He knows that the other person is unaware that an indecent contact is being committed;
>
> (4) . . .
>
> (5) . . . .

18 P.S. 3101, a definitions section under the sexual offenses Title, defines "Indecent contact" as:

> Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

The Bill of Information entered against Mr. Rowe states only that he had "indecent contact" with F.H. The Bill in no way particularizes the nature or extent of this contact nor does it specify the exact number of occasions of the contact other than through its quite general reference to a period of time of July or August 1983 and/or divers times last two years. The Division did not present any evidence in the form of witnesses, police reports, investigators testimony, or any other evidence of a documentary or testamentary type to explain in any manner the nature of the specific allegations originally made against Mr. Rowe as to the type, extent, degree, or frequency of the indecent contact with Ms. H. In addition, when Mr. Rowe testified and was asked the nature of the contact, he completely denied any improprieties whatsoever. No cross-examination, based upon police reports, statements, court transcripts, or anything else, was entered into by the deputy attorney general in order to flesh out Mr. Rowe's testimony, confront him with specific allegations and probe to determine whether his absolute denial would stand up against the information provided in the investigation

and/or trial of the case. Thus, the evidence as developed at hearing leaves the judge and Commission with the knowledge only that at some time during the indeterminate period set forth in the Bill of Information,[3] there was indecent contact between Mr. Rowe and F.H., persons of considerable age difference (29 verses 11) and that under the definition of indecent contact as contained in the Pennsylvania statutes the contact must have involved the touching of some intimate and/or sexual part of one or the other for the purpose of arousing or gratifying sexual desire and that such conduct constitutes a criminal violation in Pennsylvania.

At trial, the deputy attorney general argued that the equivalent New Jersey statute to the offense committed by Mr. Rowe was N.J.S.A. 2C:14-2b, which defines sexual assault as:

> An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

Sexual contact is defined as:

> An intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

Sexual assault is a crime of the second degree in New Jersey.

Based upon the evidence, I **FIND** that as a matter of law Derrick Rowe was convicted of indecent assault in Pennsylvania under circumstances which would indicate that had the offense occurred in New Jersey he would have been guilty of sexual assault, a crime of the second degree, because be was at the time 29 years old and the victim was less than 13 years old. A conviction for a sexual offense of the second degree constitutes an enumerated disqualifying offense pursuant to the amended Act, Section 86(c)1. Therefore, subject to a determination of rehabilitation, Mr. Rowe is diqualified from licensure.

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[3]Apparently covering a period roughly between 1982 and sometime in 1984.

(b) Rehabilitation

By statute, where a disqualifying offense is established, the applicant has the possibility of establishing rehabilitation from the disqualification. In order to establish rehabilitation, the applicant must demonstrate certain factors concerning his family, economic and employment situations, his community activities, and other aspects of his life history as set forth in the Act. The Act also notes that one of the considerations which must be taken into account is the nature and seriousness of the offense committed. It is in the area of determining rehabilitation that this case becomes most difficult.

The difficulty is in part the result of the failure of the Division to provide any details concerning the nature of Mr. Rowe's offense.[4] At the same time, it is necessary to recognize that without any details, the mere conclusion that Mr. Rowe engaged in indecent contact, as defined by the Pennsylvania statute, with a child of 11 years old is in and of itself serious and is certainly sufficient to cause great concern before agreeing to the licensure of the applicant. Mr. Rowe seeks to work in the casino industry as a computer operator. Thus it is necessary to consider all of the various factors involved in rehabilitation, as set forth in the statute, in light of the nature of the serious offense for which he was convicted and the type of employment which he seeks.

In determining the seriousness of the offense, it is impossible from the extremely limited evidence presented to determine exactly what Mr. Rowe did. In fact, because he denies having done anything improper, one is left with the fact that he is judicially guilty, although we have no way of knowing, nor is it necessarily significant from a legal standpoint, of whether he is guilty-in-fact as well as in-law. Mr. Rowe contended that the jury's verdict was the result of confusion, or as lawyers might better express it, compromise, and points to the fact that he was acquitted of the more serious statutory rape and rape charges and corruption of a minor charge. One trying to determine what the jury concluded might perceive that the jury felt there was no penetration, no intercourse, no other offense defined under Pennsylvania law as involving intercourse, such as intercourse per anus, and might conclude that the jury conceived that the sexual involvement involved only touching. There is of course no way of knowing what

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[4]The judge fully recognizes that the Division might well have difficulty in obtaining much of the police and court record due to the age of the victim. However, no representation has been made as to the efforts, if any, made in this respect, including the possibility of court orders to secure the data.

the jury's determination was as to the nature and extent of the touching and it is at least conceivable, in the absence of any evidence, any definition of the allegations actually made other than those in the Bill of Information which were the subject of not-guilty verdicts, that Mr. Rowe did no more than touch the child on the breast through her clothing on one occasion, or even pat her on the rear. Such contact would, under both the Pennsylvania and New Jersey definitions of indecent contact and sexual contact, be sufficient to permit a finding of guilt. On the other hand, it is entirely possible that Mr. Rowe may have on numerous occasions engaged in considerable sexual foreplay with his victim in circumstances which, while not involving intercourse, involved extensive and extremely intimate physical contact. Either scenario would constitute a basis for the finding of the jury and yet would permit the jury to properly find the defendent not guilty of rape or statutory rape. At the same time, either set of facts would have permitted the jury to conclude that Mr. Rowe's action had corrupted the minor and yet the jury did not choose to convict for that offense. Under the circumstances, one is left in an extreme quandary as to exactly what Mr. Rowe did and how serious it was. While this judge readily concedes that even the first set of facts, that is a single touching on one occasion of the clothed breast or rear of an 11 year old, is serious, at the same time, depending on the circumstances involved, the seriousness might pale as against numerous extensive contacts of various intimate portions of the victim's anatomy.

There is one other factor which must be considered in determining how serious the offense was. This is the sentence which was imposed on the respondent. To add to the uncertainty caused by the lack of any evidential basis for determining what exactly occurred, we are faced with a sentence, which, despite the sexual nature of the offense, and the great age difference between the perpetrator and the victim, seems to imply that the court was rather lenient in its judgment of the severity of the incident and the sentence that was properly imposed. In this day and age, it seems surprising to find that a 29 year old convicted of having sexual contact with an 11 year old received nothing more than 42 days in jail which he had already served apparently awaiting bail, and an 18 month probationary period. The nature of sexual offenses, the concern about possible repetition, the substantial age difference involved and the youth of the victim, all would have appeared to mitigate in favor of severe sentence, or at least of some substantial prison term, or a lengthy period of probation at minimum. Despite this, the judge, for reasons which may have been part of the sentencing transcript which have not been presented at this hearing, determined to make the sentence quite limited and lenient in scope. Perhaps this is a message as to the court's feeling that the verdict was in fact a compromise and

that in the court's view Mr. Rowe had not been proven guilty of anything. However, the sentencing judge, if he did not feel that Rowe was guilty or if no motion was made to overturn the verdict, might have felt compelled to sentence Rowe to something and therefore might have concluded that the sentence which he imposed was the minimum which he could responsibly affix.

When all of the above factors are put together, it becomes almost impossible to determine how severe the incident was. Based on the statutory definition and the fact that there was a sexual contact, that in and of itself is serious. At the same time, the nature of the sentence seems to imply that the court did not think it was terribly serious.

In addition to the largely speculative conclusions on the seriousness-in-fact (as opposed to seriousness-qua-sexual offense), the evidence establishes that Mr. Rowe is a 34 year old, supporting 4 daughters when he works, who has been employed in the industry on a prior occasion and had problems with his punctuality because of his lengthy commute, and is presently unemployed after having worked for a food provider some months ago. Finally, we know that he is still on probation.

Based on all of the above, I believe that the inference arising from the nature of the sentence imposed on Mr. Rowe is that while the incident was an example of improper, reprehensible behavior on the part of an adult toward a child, the Pennsylvania court did not view it as particularly serious, and most likely as aberrational.

Any incidents which may have in fact occurred between Mr. Rowe and F.H. occurred sometime between 1982 and 1984, four to six years ago. Since that time Mr. Rowe has been employed on occasion and has on occasion been without work. He worked in the industry for several months in 1984, apparently after the incidents, although before his conviction. Otherwise, it appears that he has attempted to support his children where possible and has remained out of any trouble with the law. While he is still on probation, I perceive no reasonable basis for concluding that he will not successfully conclude the probation period. If he does not, the Division certainly can proceed against him.

Given all of the circumstances, I **CONCLUDE** that the respondent has demonstrated by clear and convincing evidence that he has rehabilitated himself from the disqualifying event. At present, I perceive that he has the requisite good character,

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honesty and integrity for licensure and that his prior unfortunate involvement should not bar him from employment within the casino industry. It is therefore **ORDERED** that his license be **GRANTED.**

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

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

May 5, 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

5-9-88
DATE

Marianne Farina
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 10 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

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EVIDENCE LIST

On behalf of respondent:

R-1 Bill of Information, Commonwealth of Pennsylviania v. Derrick Rowe

R-2 Trial/Plea/Sentence Record

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-32
LICENSE NO. 48263-21
OAL DOCKET NO. CCC 6491-88
ORDER NO. 89-14-20

RENEWAL APPLICATION OF PHILLIP J. SALIMBENE

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 5, 1989,

IT IS on this 17th day of April 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6491-88
AGENCY DKT. NO. 89-EA-32

PHILLIP J. SALIMBENE,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Phillip J. Salimbene, petitioner, pro se
R. Lane Stebbins, Deputy Attorney General, for respondent (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Record Closed: January 3, 1989 Decided: February 17, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The petitioner applied to the Casino Control Commission (Commission) to renew his casino employee gaming license. The Division of Gaming Enforcement (Division) filed a letter with the Commission objecting to the reissuance of petitioner's gaming license on the grounds that petitioner lacked the financial stability, integrity and responsibility required for employee licensure by N.J.S.A. 5:12-89(b)(1) and N.J.S.A. 5:12-90(b).

New Jersey is an Equal Opportunity Employer

The Division also objected to petitioner's relicensure on the grounds that petitioner lacked the good character, honesty and integrity required for casino employee licensure by N.J.S.A. 5:12-89(b)(2) and N.J.S.A. 5:12-90(b).

The Commission transmitted the matter to the Office of Administrative Law (OAL) on September 1, 1988 to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 27, 1988 and the plenary hearing was held on January 3, 1989.

FACTUAL DISCUSSION

Phillip Salimbene, petitioner, was issued a casino employee license at a meeting of the Commission on March 21, 1984. In a letter written April 2, 1984, the Commission advised petitioner that it had "reservations concerning (his) qualifications for licensure." The Commission went on in the letter to describe an obligation of the petitioner to the New Jersey Higher Education Assistance Authority (Authority) for a student loan, reminded petitioner of it's duty to consider his financial stability, integrity and responsibility according to law, and alerted petitioner that it intended to consider the petitioner's "efforts to satisfy (this) obligation at the time it acts upon any future renewals or other future applications."

The obligation arose as a result of petitioner's attending Kean College in 1973, 1974 and 1975. He utilized the Authority to obtain a student loan to pay part of his tuition. He borrowed a total of $2,014.96.

According to R-1 and R-2, petitioner's obligation to repay the student loan began on September 15, 1981 at the rate of $50 per month thereafter until paid. The loan was actually repaid in 14 installments as follows:

#1	7-07-83	$ 75.00
#2	8-22-84	500.00
#3	9-28-84	150.00
#4	11-7-84	150.00
#5	1-24-85	50.00
#6	3-20-85	50.00

#7	1-25-86	75.00
#8	8-22-86	33.69
#9	9-19-86	122.31
#10	4-21-87	100.00
#11	8-07-87	162.00
#12	8-12-88	50.00
#13	9-15-88	83.00
#14	11-7-88	1,403.58

Payments #8, #9, #11 and #13 were made by the Authority seizing the petitioner's tax refunds. All other payments were voluntary. The final payment was made with funds borrowed from family in anticipation of this hearing.

On November 9, 1988, the Authority sent petitioner a letter informing him that his obligation was satisfied and commending him for his "perseverance" and for "honoring (his) commitment."

It further appeared that petitioner had a judgment in the amount of $86.42 filed against him by a fuel company. He testified he was unaware of the judgment until it was brought to his attention by the Division. He then satisfied that obligation.

On March 14, 1985, the petitioner was arrested in Ocean City, New Jersey, for possession of marijuana. He was convicted and fined $200 on or about April 15, 1986. Petitioner paid this fine in two installments of $50 and $150. The final payment was made on October 27, 1988 (P-2).

The petitioner did not disclose this arrest on his employee license renewal application of November 19, 1986. (R-1). A Division investigator interviewed the petitioner by telephone after receiving his renewal application and questioned him about the Ocean City arrest. The petitioner stated to the investigator that he "missed the question" on the application form. He acknowledged his arrest and conviction to the investigator. The Division accepted the petitioner's answer that he "missed the question" and did not assert as an additional ground for denial of petitioner's renewal application his failure to disclose facts material to qualification as provided for by N.J.S.A. 5:12-86b and N.J.S.A. 5:12-90e. At the hearing the

petitioner indicated that the reason he failed to disclose the Ocean City arrest was because he feared he would not be licensed.

The petitioner lives with his wife and three children in Cape May County. He is the sole support of the family. He rents the family home for $400 per month. He pays utilities and is responsible for maintenance of the home. His landlord writes that he has been timely with his rent for the four years he has resided there and maintains the house and grounds so as to do "credit to the neighborhood" (P-3).

The petitioner has been employed as a dealer at the same casino hotel since he was first licensed in 1984. His evaluations for the years 1985, 1986 and 1987 are mostly in the "outstanding" and "very good" range in all categories with a few "satisfactories". He is "always on time", he "works well with fellow employees", makes a good appearance, is one of the better dealers and has excellent potential for supervision (P-4, P-5, P-6).

Petitioner earns approximately $27,000 per annum and has earned in the mid-twenties since obtaining casino employment. He is paid an hourly wage of $6.50 and receives tips. The family has a mutual fund worth approximately $5,000 purchased with the wife's money when she was employed. Petitioner's wife said that he is an excellent father and husband. As an instance, she said that even though petitioner works a late shift at the casino from which he returns home at 6:00 a.m., he still manages to attend their children's little league games and events during the day. She said they live frugally and have not purchased a major appliance in years. She said the only outstanding debt the family has is a car loan.

She explained that in 1984 the family had financial problems because they had difficulty obtaining reimbursement from an insurance company for hospital expenses incurred in connection with the birth of a child.

FINANCIAL DISCUSSION

The Casino Control Act requires casino employee licensees to "provide such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant..." N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b. In discussing this financial

standard as it applies to corporate applicants for a casino license and their individual qualifiers the Commission has identified the standard as follows:

> "In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual". *In re Resorts Casino Application* 10 N.J.A.R. 244, 250 (1979).

Of course the legislature did not intend to require the same high standard of mere hourly gaming employees as it does of casino applicants or so called "key employees". The statutory requirements for casinos and key employees are more stringent in many respects. For instance "key employees" are not permitted to save their licenses from the disqualifying effects of conviction for certain enumerated crimes. Mere gaming employees and others may do so. N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d.

The petitioner has been slow to repay his student loan. The Authority on occasion had to seize his tax returns in order to obtain repayment. Nevertheless, it is the only financial blot on the petitioner's record. The fuel oil judgment he satisfactorily explained and it is paid in full. I make no adverse finding with regard to his seeming late payment of the fine in Ocean City. The record concerning this conviction was murky. No certified copy was presented by the State. There is no indication that bench warrants were issued in order to obtain payment of the fine. There is simply no evidence that petitioner failed to pay the fine in the time required by the court except for the rather lengthy elapsed time between the arrest, conviction and payment of the final installment.

Taking into consideration the fact that the petitioner supports a family unit of four on an annual salary of approximately $27,000 and the fact that the petitioner is practically debt free except for a car loan and a family loan in the amount of $1,400 used to satisfy the school loan and the fact that petitioner has managed to preserve a $5,000 mutual fund purchased with his wife's earnings some years ago, I **CONCLUDE** that the petitioner possesses the requisite financial stability, integrity and responsibility for casino employee licensure pursuant to N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b. There is apparently no risk that the petitioner will

engage in cheating or theft in order to increase his income. This must be the main thrust of the financial standard for mere gaming employees.

DISCUSSION OF CHARACTER

The Casino Control Act requires that applicants for casino employee licensure "shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." N.J.S.A. 5:12-89 and N.J.S.A. 5:12-90b.

The Division cites as evidence that the petitioner lacks these qualities - his arrest and conviction while a licensee for possession of marijuana, a disorderly persons offense; his failure to pay his school loan promptly although the Commission had reminded him of his obligation to satisfy this loan in its original licensing letter to him of April 2, 1984; and finally his admission at the hearing that he had failed to disclose the Ocean City arrest because he feared he would not be licensed.

The petitioner admitted that his arrest and conviction for possession of marijuana was a grave error. However, it occurred early in 1985, was a minor offense, was not related to his casino employment and has not been repeated.

Petitioner's failure to pay his school loan off, even though the Commission advised him to do so, was also a grave error. The loan is, however, now completely satisfied, there is no other evidence of past due debt and the petitioner seems to live in a frugal life style. Finally it must be observed that petitioner's income is not large and is primarily dependant on tips.

Petitioner's failure to disclose his arrest and conviction is a different kind of problem and requires close analysis. He failed to check the blocks in his relicensing application which ask if the applicant has ever been arrested and/or convicted for a disorderly persons offense, among other things. He cured this failure to disclose to the Division's satisfaction during his telephone interview with an investigator. He acknowledged both his arrest and conviction to her. He explained that he missed the question. The Division did not list this issue for hearing pursuant to N.J.S.A. 5:12-86b which requires an applicant to divulge any fact material to qualification.

The fact that the petitioner did divulge his arrest and conviction during the interview was deemed by the Division curative of the initial failure. This appears to be the Divisions usual practice (see paragraph C of the Division's objection letter of July 27, 1988). At the hearing however, the petitioner was asked about the answer he made to the Division's investigator and he admitted that he concealed the arrest through fear of being denied licensure.

It would be anomalous to treat the petitioners voluntary and truthful admission that he had previously been untruthful as an instance of untruthfulness so as to deny licensure to the petitioner.

Because this petitioner lives a quiet, frugal and uneventful life, is the sole support of his wife and three children and does so to their satisfaction; because he is deemed a credit to his neighborhood by his landlord and a credit to the casino industry by his supervisors and, although his arrest and initial failure to divulge joined with his failure to promptly pay his school loan when admonished to do so by the Commission reflect adversely on the applicants good character, honesty and integrity; his positive exercise of family and work responsibilities far outweigh the negative and temporary aspects of his character flaws.

I therefore **CONCLUDE** that the petitioner has clearly and convincingly shown that he possess the requisite good character, honesty and integrity for casino employee licensure and I **ORDER** that the letter of the Division objecting to petitioner's relicensure be dismissed and that petitioner's casino employee license be renewed.

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

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

January 17, 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2/23/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 23 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Phillip J. Salimbene
Lisa Salimbene

For the Respondent:

Phillip J. Salimbene

EXHIBIT LIST

For the Petitioner:

P-1 Letter from New Jersey Higher Education Assistance Authority
P-2 Receipt from Ocean City Municipal Court
P-3 Letter from landlord of Phillip J. Salimbene
P-4 Performance evaluation from employer
P-5 Performance evaluation from employer
P-6 Performance evaluation from employer
P-7 Letter from Richard K. Silberberg

For the Respondent:

R-1 Copy of Renewal Application of Phillip J. Salimbene
R-2 Computer printout from New Jersey Higher Education Assistance Authority
R-3 (Unidentified)
R-4 Copy of letter from Jim Bowen

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-152
REGISTRATION NO. 52487-40
OAL DOCKET NO. CCC 9146-88
(CCC 126-88 ON REMAND)
ORDER NO. 89-11-13

STATE OF NEW JERSEY, DEPARTMENT	:	
OF LAW & PUBLIC SAFETY, DIVISION	:	
OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
JAMIE M. SEWELL,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 29th day of March 1989, ORDERED that the administrative law judge's conclusion that the "respondent no longer requests relief" and his recommendation to "dismiss the matter" are rejected on the grounds that the appropriate disposition of this matter pursuant to N.J.A.C.

1.1-14.4(a) is to grant the relief requested by the Division of Gaming Enforcement,

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-108(d), the respondent, by reason of his failure to appear at the hearing scheduled in the Office of Administrative Law, has admitted the facts and matters alleged against him by the Division of Gaming Enforcement in its complaint and affidavit in support of its motion for reconsideration, namely: (a) that he was arrested on March 14, 1988, for possession of CDS (marijuana less than one ounce) and possession of CDS with intent to distribute; (b) that he was convicted of the simple possession offense upon his plea of guilty and that the remaining charge was dismissed and; (c) that at the hearing conducted in the OAL on May 12, 1988, Mr. Sewell denied having been arrested in 1988, which testimony was false; and

IT IS FURTHER ORDERED that that portion of the Commission's amended order of November 4, 1988, which waived pursuant to N.J.S.A. 5:12-91(e) the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(2) by reason of his conviction for possession of CDS with intent to distribute is hereby vacated; and

IT IS FURTHER ORDERED that the casino hotel registraton held by Jamie M. Sewell is revoked; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 9146-88
(ON REMAND - CCC 126-88)
AGENCY DKT. NO. 88-152

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JAMIE M. SEWELL,
Respondent.

Nancy P. Scharff, Deputy Attorney General appearing for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

No appearance by or on behalf of respondent

Record Closed: January 30, 1989 Decided: January 30, 1989

BEFORE **RICHARD J. MURPHY,** ALJ:

By order of the Division of Gaming Enforcement, the above matter was remanded to the Office of Administrative Law (OAL) for a rehearing based upon Mr. Sewell's recent arrest and his allegedly false testimony at the OAL hearing on May 12, 1988, regarding his arrest record.

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The remanded matter was transmitted to the Office of Administrative Law on December 16, 1988, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On January 4, 1989, the OAL notified the parties that a telephone prehearing conference was to be held on January 17, 1989, at 10 a.m. On January 5, 1989, the OAL notified the parties that the conference time had been changed to 10 a.m. on January 19, 1989.

On the scheduled prehearing date, respondent's telephone number was called and had been disconnected; the second number given was then called, and the person answering the phone said that Mr. Sewell no longer lived there and that she did not know where to reach him.

Ten days have passed since the scheduled prehearing date. During that period the respondent has not contacted the Office of Administrative Law to offer any explanation for the nonappearance.

Therefore, I **CONCLUDE** that respondent no longer requests relief. In accordance with N.J.A.C. 1:1-14.4(a), I dismiss the matter.

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

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

Jan. 30, 1989
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

1/30/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 2 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-442
OAL DOCKET NO. CCC 2691-88
LICENSE NO. 42283-21
ORDER NO. 89-3-16

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. MARTIN SOLITRIN, Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 18, 1989,

IT IS on this 30th day of January 1989, ORDERED that the initial decision is adopted;

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2691-88
AGENCY DKT. NO. 85-442

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARTIN SOLITRIN,
Respondent.

Norma Stancil, Deputy Attorney General for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Martin Solitrin, pro se
Record Closed: October 17, 1988 Decided: December 1, 1988

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

PROCEDUREAL HISTORY AND STATEMENT OF THE CASE

Martin Solitrin, respondent, possesses casino employee license 42283-21. On or about October 10, 1985, respondent was indicted for conspiracy to promote gambling (third degree), N.J.S.A. 2C:5-2 and promoting gambling (third degree) N.J.S.A. 2C:37-4. He was diverted to a pretrial intervention program. On November 14, 1985, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking to revoke the respondent's casino employee license based on his alleged criminal activity. The respondent requested a hearing and on April 12, 1988, the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-

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1 et seq. A prehearing conference was held on June 7, 1988, and the following issues to be resolved at the hearing were identified:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:37-4, maintenance of a gambling resort (fourth degree) and N.J.S.A. 2C:37-2, promoting gambling (third degree).

B. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:37-4 and N.J.S.A. 2C:37-2; despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

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

D. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

The parties convened for a plenary hearing on October 17, 1988.

SUMMARY OF DIVISION'S TESTIMONY

Detective Robert Francis Walker, New Jersey State Police, is a member of the Intelligence Bureau. Prior to this assignment he was a member of the Casino Investigation Bureau from 1983 until 1987. He conducted investigations of sports betting in New Jersey casinos.[1]

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1 This aspect of gambling is not permitted by the Casino Control Act. N.J.S.A 5:12-1 et seq. It is illegal gambling as defined by N.J.S.A. 2C:37-1 et seq. There was no suggestion in the evidence presented here that sports betting was condoned by casinos.

Based on tips from informants, Walker began surveillance of Larry Miller. He observed Miller in the Tropicana Hotel Casino meeting with people and exchanging money. He saw him in the company of respondent. On one occasion he saw respondent cash in approximately $40,000 in chips for Miller. Miller was observed going into respondent's home at regular times. He always parked his car a block away.

The Internal Revenue Service went through respondent's trash and obtained his phone bills. They shared them with Walker. Based upon information contained in these phone bills, Walker obtained a pen register on respondent's phone. This device records outgoing phone calls. It recorded approximately 50 outgoing long distance calls made from Solitrin's phone every night that Miller went to Solitrin's home. The FBI told Walker that many of these phone numbers were the phone numbers of known bookmakers in other states. Based on this information Walker obtained an Order permitting a wire tap upon respondent's phone for 20 days beginning in March of 1985.

Walker monitored the wire tap and transcribed the conversations. He heard Miller discuss betting lines, favorites, and point spreads. He heard Miller call bettors and accept bets. He heard Miller edge off bets to other bookmakers when he had to much money bet on one team.[2] Walker overheard Miller accept numerous bets in large amounts. For instance, Myron Rosenbaum made frequent 'dime' bets. Walker says that 'dimes' were argot for one thousand dollars. He said this was clear from the context. Walker overheard Miller in asides, asking respondent to get him a soda and a newspaper. He never heard Miller receive an incoming telephone call nor did he ever hear respondent take a bet on the phone.

Miller had at least two other persons whose phone he used for similar purposes; Leonard Romm and David Basemen. Walker overheard Romm and the respondent on the phone discussing Miller's obligation to pay their phone bills. Those bills exceeded $300.00 per month not including MCI's charges.

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2 Edging off is a method of spreading the risk. A bookmaker works on a commission from the winner's share so he attempts to spread the bets evenly between teams playing each other. If he has $100 bet on Cleveland, Monday December 12, 1988, he wants $100 bet on Miami because they play each other on that date.

Neither the wiretap order or transcripts of these conversations were made available to the Division of Gaming Enforcement and as a consequence were not admitted into evidence. Walker testified from memory.

Walker was generally a credible witness. He made only one statement which is not believable. In summarizing a conversation between Miller and Richard Katzman, Walker said: "He (Miller) called Richard Katzman, a bookie in Pittsburg. Katzman told Miller what five bets he wanted covered and then Miller called other bookies and bet for Katzman." This sounds as though Walker conformed his testimony to the statute. N.J.S.A. 37-2b(1) requires 5 bets totaling $1000 per diem to make the offense a crime of the third degree.

SUMMARY OF RESPONDENTS TESTIMONY

Respondent is a 60 year old male who has known Miller since childhood. They grew up together in South Philadelphia. The respondent is a retired jeweler. He is a compulsive gambler and is a member of Gamblers Anonymous. He described Miller as a 'gambling degenerate". He said he did not know that Miller was a "bookie," he thought Miller was merely placing bets on his phone, not taking them. He said he never questioned Miller about what he did, he said "it wasn't my business." The respondent offered several letters in evidence describing his good character, honesty, and integrity. Some writers are fellow members of Gamblers Anonymous, one is under indictment for medicare fraud.

LAW

The respondent avoided disposition of his criminal case in court by accepting pretrial intervention. R.3:28. Pretrial intervention permits dismissal of the complaint, indictment, or accusation after a period of supervision and ultimately permits expungement of the arrest record.

The Casino Control Act however, permits the Division of Gaming Enforcement to prove the underlying criminal conduct in an administrative hearing in order to show that the applicant for a casino employee license committed acts which would constitute an offense under the criminal laws of this state. N.J.S.A.

5:12-86g. If the offense proved is one listed in section 86c of the Act, the applicant is disqualified for licensure.

The offenses sought to be proved here by a preponderance of the credible evidence are violations of N.J.S.A. 2C:37-4, maintenance of a gambling resort (fourth degree) and N.J.S.A. 2C:37-2, promoting gambling (third degree).

The statute defining the offense of maintaining a gambling resort, N.J.S.A. 2C:37-4 is as follows:

> a. A person is guilty of a crime of the fourth degree if, having substantial proprietary or other authoritative control over premises which are being used with his knowledge for purposes of activities prohibited by 2C:37-2 and 2C:37-3, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation and he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of such gambling activity on such premises and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $15,000.00 and any other appropriate disposition authorized by 2C:43.
>
> b. A person is guilty of a crime of the fourth degree if, having substantial proprietary or other authoritative control over premises open to the general public which are being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $15,000.00 and any other appropriate disposition authorized by 2C:43-2b.

Promoting Gambling, 2C:37-2 is defined as follows:

> 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 or any of its financial or recording phases, or toward any other phase of its operation.

b. Grading. A person who violates the provisions of subsection a. by:

(1) Engaging in bookmaking to the extent he receives or accepts in any 1 day more than five bets totalling more than $1,000.00; or

(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.

A person who violates the provisions of subsection a. by engaging in bookmaking to the extent he receives or accepts three or more bets in any 2-week period is guilty of a crime of the fourth degree and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine not more than $15,000.00 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 or not more than $10,000.00 and any other appropriate disposition authorized by 2C:43-2b.
>
> c. It is a defense to a prosecution under subsection a. that the person participated only as a player. It shall be the burden of the defendant to prove by clear and convincing evidence his status as such player.

Although 2C:37-4 refers to 2C:37-3, possession of gambling records, it is not material in this proceeding. No gambling records of any kind are in evidence.

FINDINGS AND CONCLUSIONS

It is clear that respondent, despite his denials, must have known what Miller was doing. Respondent's use of the term 'gambling degenerate' is only one clue that he is knowledgeable concerning bettors and bookmaking. This is a common way in which heavy gamblers refer to each other. Respondent is a gambler himself and a member of Gamblers Anonymous. He grew up with Miller and was his friend for more than 47 years. Walker heard Miller, while on the phone with a bettor, tell respondent to get him a soda and on another occasion to get him a paper. Respondent was therefore in earshot of Miller. The fact that respondent and Romm discussed Miller's payment of their respective phone bills indicates that respondent knew much more about Miller's business than he acknowledges. He knew for instance, that Miller also used Romm's phones for accepting bets. Respondent also had some knowledge of the amount of money Miller was accepting. He was a observed cashing $40,000.00 worth of chips for Miller on one occasion. This must have been gambling proceeds. Of course respondent directly benefited, he had his telephone paid for by Miller.

I FIND that respondent engaged in conduct which materially aided Miller in gambling activity. He provided him with a telephone and a place to work. I FIND that Miller engaged in Bookmaking to the extent he received or accepted five bets, totaling more than $1000 in one day. He accepted thousand dollar bets from Myron Rosenbaum. He made over 50 calls a night.

I CONCLUDE that the respondent aided and abetted acts which constitute the crime of promoting gambling. **I CONCLUDE** that the crime committed was in the third degree. An aider and abettor may be punished as a principal, N.J.S.A. 2C:2-6.

I FURTHER CONCLUDE that the respondent committed acts which constitute the crime of maintaining a gambling resort contrary to N.J.S.A. 2C:37-4. The acts committed to satisfy this statute are in this case the identical acts committed to satisfy the statute against promoting gambling. **I FIND**, therefore, that there is a merger.

INIMICALITY MOOT

Since I have found the existence of a statutory disqualifier, the issue of inimicality (issue B) is moot. Of course the employment of any person who maintains a gambling resort and promotes illegal gambling would be inimical to the Casino Control Act and it's policies.

REHABILITATION

The Casino Control Act permits lower level employees to save their gaming licenses and registrations from revocation if they can affirmatively show that they are rehabilitated, sections 90h and 91d.

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

I FIND as follows:

(1) The respondent was a casino host. His duties placed him in close contact with casino gamblers. He was a representative of the casino.

(2) The offense contributed to and promoted illegal gambling.

(3) The respondent made his home and telephone available to a bookmaker.

(4) The offense occurred over a period of several months ending with respondent's arrest in March 1985.

(5) The applicant was approximately 57 years old at the time of the offense.

(6) The offense was repeated over several months and was terminated with respondent's first criminal arrest in March of 1985.

(7) There was no evidence that social conditions contributed to the offense.

(8) There was some evidence of rehabilitation. The respondent was granted PTI and performed over 400 hours of community service. He has letters of recommendation from well known members of the community.

Nevertheless, I am compelled to conclude that the respondent has not affirmatively demonstrated his rehabilitation. He does not acknowledge that his behavior was criminal. He poses as an innocent when in fact he was an active participant in a large and well conceived bookmaking operation which was only solved by excellent cooperation among law enforcement agencies.

This respondent was a mature person when the crime was committed. He must have appreciated the consequences of his actions. In addition, his participation in this bookmaking offense extended to the casino floor.

The affirmative proof of rehabilitation must include an acknowledgment that the behavior complained of does not conform to the high standards required of applicants for casino licensure. The respondent refuses to admit that what he did was wrong. He claims that he did not know that Miller was using his (respondent's) phone to solicit sports bets. What is perhaps worse, respondent says, "it wasn't my business." This attitude indicates that the respondent is corruptible and is not therefore rehabilitated.

GOOD CHARACTER, HONESTY AND INTEGRITY

For the reasons expressed in the rehabilitation analysis, I **CONCLUDE** that the respondent does not possess the requisite good character, honesty and integrity for casino employee licensure.

Additionally, even if the respondent told the truth and he did not in fact know that Miller was soliciting bets on his (respondent's) telephone, then his conduct towards Miller was not the conduct required of persons who should possess casino employee licenses. He said he thought Miller was betting, was a gambling degenerate, and that "...it was none of (his, respondent's) business." this attitude is reprehensible. It shows no concern for the integrity of legalized gambling in New Jersey. As a reputed member of Gambler's Anonymous, it shows respondent had no concern for his friend Miller, if he was an addicted gambler, and it shows no concern for respondent's own reputation for good character, honesty and integrity. Persons who possess these characteristics do not let compulsive gamblers utilize their homes and telephones on a regular basis to gamble illegally and then excuse their own behavior by claiming that "it was not my business."

ORDER

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

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION**, does not so act in

forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

December 6, 1988
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12-5-88
DATE

CASINO CONTROL COMMISSION

DEC 6 1988
DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Detective Robert Francis Walker, N.J. State Police
Martin Solitrin

For the Respondent:

Martin Solitrin

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 New Jersey State Police Report
P-3 Inventory Order

For the Respondent:

R-1 Letter from James J. Sykes, Sixth Ward Councilman, City of Atlantic City, dated August 15, 1988
R-2 Letter from Arnold Wexler, Executive Director, The Council on Compulsive Gambling of New Jersey, Inc.
R-3 Letter from Harvey Fogel
R-4 Letter from Dr. Joseph Lowenstein, Ventnor Chiropractic Center, dated August 17, 1988
R-5 Letter from Edmund Colanzi, Practical Applications, Incorporated, dated August 21, 1988
R-6 Letter from Russell Delig
R-7 Letter from Arnold Orsatti, Jr., Councilman, City of Atlantic City, dated August 18, 1988

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-M-2
APPLICATION NO. 4233-11
LICENSE NO. 50388-21
OAL DOCKET NO. CCC 6907-88
ORDER NO. 89-18-17

QUALIFICATION AND APPLICATIONS

OF JOHNNY M. STRICKLAND

FOR A CASINO KEY EMPLOYEE LICENSE

AND CASINO EMPLOYEE RENEWAL

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the applicant having filed a reply; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1989,

IT IS on this 8th day of May 1989, ORDERED that the initial decision is modified as follows:

(1) Because Mr. Strickland does not presently meet the residency requirements of N.J.S.A. 5:12-89(b)(4) and 90(b) and because there is no basis for waiver of the residency requirement, he is not eligible for licensure in any position which requires residency. However, he is qualified for any license for which neither New Jersey residence nor any specified experience is required.

(2) In the event Mr. Strickland seeks licensure in a position which requires New Jersey residency, he must first petition the Commission for a determination as to whether he satisfies the residency requirement.

IT IS FURTHER ORDERED that the applications of Johnny M. Strickland which carry no residency requirements are granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER NO. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6907-88
AGENCY DKT. NO. 89-M-2

JOHNNY M. STRICKLAND,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Mark H. Sandson, Esq., for petitioner (Hankin, Sandson & Sandman, attorneys)

Barth F. Aaron, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: January 10, 1989 Decided: February 27, 1989

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

STATEMENT OF THE CASE

Johnny M. Strickland (petitioner) seeks licensure as a casino key employee/qualifier under the Casino Control Act (N.J.S.A. 5:12-1 et seq). He also seeks renewal of his casino employee license. The position in question which requires casino employee licensure and qualifier status is vice president of casino marketing/southeast for the Tropicana Casino Hotel. The holder of such a position is required to be licensed in accordance with the standards for a casino key employee pursuant to section 89 of the act and is also considered to be a qualifier of the casino licensee pursuant to section 85c.

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In a letter report to the Casino Control Commission dated September 8, 1988, the Division of Gaming Enforcement objected to the petitioner's suitability for casino key employee licensure and it further objected to the renewal of the petitioner's casino employee license, based upon the allegation that the petitioner had provided false and misleading information concerning his residency in an affidavit to the Casino Control Commission. These are the issues:

1. Has the petitioner demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required by sections 89b(2) and 90b of the Casino Control Act for licensure as a casino key employee and casino employee, in light of his alleged misrepresentation of his New Jersey residency in an affidavit which he filed with the Commission in order to obtain casino employee licensure in 1986.

2. Is the petitioner disqualified from casino key employee and casino employee licensure pursuant to section 86b of the act by virtue of the aforementioned alleged misrepresentation.

3. Is the petitioner qualified for casino key employee and casino employee licensure in the absence of New Jersey residency as required by sections 89b(4) and 90c of the act and N.J.A.C. 19:41-8.8(v)3.

By stipulation of counsel placed on the record at the beginning of the hearing in this matter, the third issue was deemed to be moot in light of the advice counsel received from the staff of the Casino Control Commission. According to counsel, the Commission would act on a petition for waiver of residency if the petitioner is determined to be otherwise qualified for casino key employee licensure.

PROCEDURAL HISTORY

On September 22, 1988, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on October 13, 1988. The hearing was held on December 19, 1988, in Absecon, New Jersey.

The record remained open following the hearing to permit the parties to submit post-hearing briefs. These papers were received from the parties on January 10, 1989, and the record closed on that date.

FINDINGS OF FACT

The petitioner is a 48 year-old resident of Virginia Beach, Virginia. He began his employment with the Tropicana Hotel and Casino in April 1984 as a marketing representative. The petitioner received junket representative license no. 50388-21 in July 1985 (Exhibit R-3). In essence, his duties involved setting up programs to bring gaming patrons to the casino from Virginia, and the petitioner accompanied each flight.

The petitioner's junket representative license (Exhibit R-3) states his address in Virginia Beach, Virginia. Early in 1986, the petitioner applied to the Casino Control Commission for issuance of a gaming employee license. As part of that application, the petitioner executed an affidavit which stated that he commenced his residency in the State of New Jersey on or about March 1, 1986 (Exhibit R-5). He listed his previous address in Virginia Beach, Virginia and his present address as "Tropicana Hotel and Casino, Iowa and the Boardwalk, Atlantic City, New Jersey 08401." The affidavit further stated the petitioner's intention to remain a resident of New Jersey. The Commission issued a gaming license to the petitioner in March 1986 (Exhibit R-4).

In the fall of 1987, the petitioner was promoted by Tropicana to the position of vice president, southeast marketing. Pursuant to this promotion, the petitioner filed an application with the Casino Control Commission for licensure as a casino key employee. His personal history disclosure form - 1 was filed with the Commission on March 1, 1988 (Exhibit R-2). In this form, the petitioner identified the address at which he presently resided. It was the same Virginia Beach address which was shown on his junket representative license (Exhibit R-3). In addition, the disclosure form listed at question no. 17 the addresses of all residences which the petitioner has held since the age of 18. All were within the State of Virginia (Exhibit R-2).

On September 2, 1988, the petitioner was interviewed under oath by counsel for the Division. The pertinent part of the interview transcript was admitted into evidence as exhibit R-1. The petitioner acknowledged during the interview that he had never voted in New Jersey, nor had he ever had a New Jersey driver license. He

had never owned a house nor ever rented an apartment in New Jersey. The petitioner was asked by the deputy attorney general if he had ever been a resident of New Jersey and the petitioner answered, "no, sir." Six days after this interview, the Division filed its letter report with the Casino Control Commission recommending that the petitioner be denied qualification and licensure as a casino key employee.

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

The petitioner testified at the hearing concerning the foregoing events and he provided his explanation. Beginning in 1984, the petitioner was at the Tropicana Casino on an average of three to five days per week. Some of the junkets which he brought to the casino were day trips while some lasted for two or three days, or even for a week.

The petitioner's contacts with New Jersey became more intense in 1986. Around that time, the Tropicana's vice president for casino operations left, taking a number of marketing employees with him. He was replaced by Robert James, to whom the petitioner reported directly. According to the petitioner, Mr. James asked that he remain at the Tropicana while the marketing department was reorganized and staffed. Since he was staying at the facility, the petitioner was always available to be paged at any hour of the day or night. Consequently, Mr. James suggested to the petitioner that he should look for a place to stay off property. The petitioner testified that he made several efforts to find a place to live in New Jersey. In his sworn interview (Exhibit R-1), the petitioner stated that he looked in the newspaper and made a couple of phone calls. However, he continued to stay at the Tropicana and did not find another place to live in New Jersey.

The petitioner also explained the circumstances surrounding his application for a gaming license in March 1986. Although the junket representative license which he held was all that he needed to perform his duties, the petitioner sought a casino employee license so that he would be able to display the same credentials held by other gaming employees on the casino floor. In his sworn interview (Exhibit R-1), the petitioner stated that he wanted the upgraded license document because "... most of the people on the property had a license like this that showed a picture which just made it more visible to the public." At the hearing, the petitioner explained that his junket representative license (Exhibit R-3) did not have a photo

and security people at the casino regularly caused him aggravation because they were not familiar with the junket representative license. Thus, he sought a gaming employee license so that he would have the same credential as the other employees on the floor.

The petitioner testified that he spoke to Robert James about obtaining the gaming employee license in February or March 1986. He and Mr. James agreed that the petitioner could be considered a New Jersey resident due to the fact that he was spending so much time in the state. The petitioner stated sincerely that he did not want to hide anything and that is why he listed his residence as the Tropicana, which is where he was actually staying. It was the petitioner's testimony that when he signed the residency affidavit as part of his application (Exhibit R-5), he believed that it was true. The petitioner also stated that he no longer spends as much time at the Tropicana as he did from 1984 through 1986. The petitioner testified sincerely that he has never knowingly lied to anyone and has always been able to look everyone in the eye. It was his feeling that a residence is where one spends most of his time. He believes that he was telling the truth when he said in his affidavit that he was a New Jersey resident and the petitioner testified that he must have misunderstood the deputy attorney general's question when he stated during the sworn interview that he was never a resident of New Jersey.

Robert James testified at the hearing on behalf of the petitioner. His responsibilities when he was senior vice president of casino operations included oversight of the marketing department. When a number of marketing employees left the Tropicana, Mr. James asked the petitioner to stay at the Tropicana and pursue attracting northern New Jersey and New York gaming patrons. At the time, these patrons were more valuable to the casino than the petitioner's Virginia patrons. According to Mr. James, if the petitioner had told him that he could not be in Atlantic City as required for his assignment, Mr. James would have told him that he would have to leave and look for work elsewhere.

Mr. James testified that he saw the petitioner three or four times per week. Because the petitioner would answer all of his beeper pages, whether he had any sleep or not, Mr. James urged him to find off-site housing. He was aware that the petitioner had made some effort to find housing away from the Tropicana. Mr. James also knew that the petitioner sought a gaming license and he felt the petitioner should have it if he would be more comfortable with it on the casino floor. Mr. James was present when the petitioner signed the affidavit of residency

(Exhibit R-5). He felt the petitioner was a resident of New Jersey and he had no intention at the time of sending the petitioner back to Virginia.

The petitioner presented several other witnesses on his behalf. Tropicana's junket compliance manager, Elizabeth Yoachum, testified that she knows the petitioner very well and that she has no reason whatsoever to question his honesty and integrity. She also noted that the petitioner spent considerable time at the Tropicana in 1986.

Virginia Beach resident Randy G. Watson testified that he has known the petitioner since the mid-1970's. He has met the petitioner in Atlantic City on many occasions. According to Mr. Watson, the petitioner has always been as honest as anyone could be. Dickie Godwin testified that he has known the petitioner for about seven years. He described the petitioner as a very honorable person of the highest integrity. Mr. Godwin stated that he has recently visited the petitioner at his home in Virginia Beach. However, in 1985 and 1986, the petitioner was rarely in Virginia. Except to come home to get fresh clothing, the petitioner was spending his time in Atlantic City.

Kirby F. Smith testified that he has known the petitioner for over 15 years. He described the petitioner as "100 percent honest" and he stated that he would seriously question the allegation that the petitioner would lie in a sworn statement. James H. Block is a neighbor of the petitioner in Virginia Beach. Mr. Block has known the petitioner since 1985 and he stated that he has never had any reason to doubt the petitioner's integrity. Mr. James testified that he has known the petitioner since 1980. He believes the petitioner's integrity and honesty to be impeccable; as high as any in the casino industry. Several letters which also attested to the petitioner's good character, honesty and integrity were admitted into evidence as exhibits P-1 through P-5.

The witnesses who testified concerning the petitioners good character, honesty and integrity were sincere and believable. They all hold the petitioner in high regard and they share the view that he is an honest man. This is his reputation and I so **FIND AS FACT**.

Resolution of this case essentially is dependent upon assessment of the petitioner's credibility. His qualification for casino key employee licensure has been questioned because he has provided conflicting information concerning his

residency. When he applied for a gaming license in 1986, he filed an affidavit stating that his residence was the Tropicana Casino in Atlantic City, New Jersey. When the petitioner subsequently filed a personal history disclosure form pursuant to his application for casino key employee licensure, the addresses of his current and prior residences were all in the state of Virginia.

The information provided by the petitioner concerning his residency has varied from one time to another. His answers are different. They are contradictory. However, it does not necessarily follow that the petitioner must have been lying at one time or the other. He would not have been lying if he believed the truth of his statements when they were made. The petitioner's testimony concerning his belief that he was a New Jersey resident in 1986 was straightforward and sincere, and entirely worthy of credit. He felt his regular and prolonged stays at the Tropicana were sufficient to qualify him as a New Jersey resident. In addition, it was his intention to find an off-premises dwelling and thus continue as a New Jersey resident.

Ultimately, the petitioner's needs and intentions changed. However, I **FIND AS FACT** that when the petitioner filed his residency affidavit (Exhibit R-5) with the Casino Control Commission in March 1986, he believed that he was a New Jersey resident and he intended to so remain.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino key employee license and a casino employee license must demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the act.

Section 89d of the act provides that a casino key employee license shall be denied to any applicant who is disqualified on the basis of the criteria contained in section 86 of the act. Section 90e similarly provides for denial of a casino employee license to any applicant who is disqualified on the basis of the section 86 criteria. Section 86b provides that the Commission shall deny licensure to an applicant disqualified for failure to provide information required by the act or requested by

the Commission, or for failure of the applicant to reveal any fact material to qualification, or for the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

In its first casino licensing decision, In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Dkt. No. 79-CL-1, the Commission analyzed section 86b disqualification:

> The first disqualification criterion under section 86 is failure to provide all information required by the Act or requested by the Commission, failure to reveal any fact material to qualification or supplying any information which is untrue or is misleading as to any material fact pertaining to qualification. In this regard, a "material fact" is one which would be important to evaluation of the qualifications of the Applicant or person required to be qualified. However, not every failure to provide material information should be deemed a disqualifying event. In evaluating such a failure, the commissioners should consider whether the failure was willful or whether it evinces a conscious disregard for the regulatory system. Merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification. In judging such a failure, the existence of an official request for the information would be a significant factor.

There can be little doubt that information concerning residency is "material". Absent waiver by the Commission, New Jersey residency is a requirement for licensure as a casino key employee. Was the information supplied by the petitioner concerning his residency untrue or misleading? At section 42.1, the Casino Control Act defines "resident" to be:

> 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 credible evidence in the record establishes that it was the intention of the petitioner in 1986 to remain within New Jersey for a period of time, and he manifested the genuineness of that intent by his ongoing physical presence at the Tropicana Casino Hotel in Atlantic City. He also manifested the genuineness of that intent by making some efforts to find another dwelling within the state. Based upon the foregoing, I **CONCLUDE** that the petitioner satisfied the definition of resident when he filed his residency affidavit with the Casino Control Commission in March 1986. I further **CONCLUDE** that the petitioner's failure to mention his New

Jersey residency on his subsequently filed personal history disclosure form was merely an inadvertent oversight on his part. His failure to mention his relatively brief residency in New Jersey does not evince a conscious disregard for the regulatory system. Accordingly, I further **CONCLUDE** that the petitioner has not failed to disclose a material fact and has not supplied untrue or misleading information and is thus not disqualified from licensure pursuant to section 86b of the act.

Substantial evidence was presented during the hearing concerning the petitioner's high level of integrity and honesty. On the basis of the undisputed facts in this matter, I **CONCLUDE** that the petitioner has sustained his burden of establishing by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino key employee and for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's applications for licensure as a casino key employee/qualifier and casino employee should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the applications of Johnny M. Strickland for licensure as a casino key employee and for renewal of a casino employee license be **GRANTED**.

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

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

February 27, 1989
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 1989
DATE

Jaynee LaVecchia/K.
OFFICE OF ADMINISTRATIVE LAW

jz

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter from Robert Vann, dated October 12, 1988

P-2 Letter from J. Burton Harrison, Jr., dated October 11, 1988

P-3 Letter from Mike N. Chesson, dated October 10, 1988

P-4 Letter from Richard B. Morris, dated October 10, 1988

P-5 Letter from Jim Block, dated October 13, 1988

For the respondent:

R-1 Portion of Sworn Interview, dated September 2, 1988

R-2 Personal History Disclosure Form - 1

R-3 Junket Representative License

R-4 Gaming License

R-5 Residency Affidavit

WITNESSES

For the petitioner:

Johnny M. Strickland
Robert James
Elizabeth Yoachum
Randy Watson
Dickie Godwin
Kirby F. Smith
James H. Block

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-258
APPLICATION NO. 70930-22
REGISTRATION NO. 73463-40
OAL DOCKET NO. CCC 4661-88
ORDER NO. 89-8-16

APPLICATION OF JOSEPH D. TALIAFERRO

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 22, 1989,

IT IS on this 24th day of February 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4661-88
AGENCY DKT. NO. 88-EA-258

JOSEPH D. TALIAFERRO,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Joseph D. Taliaferro, petitioner, pro se

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

Record Closed: December 27, 1988 Decided: January 9, 1989

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of petitioner's application to be licensed as a casino employee pursuant to N.J.S.A. 5:12-1 et seq. Respondent filed an objection with the Casino Control Commission, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on December 15, 1988, and the record closed on December 27, 1988, after the receipt of information unavailable at the hearing.

The question presented is whether petitioner possesses the requisite good character, honesty and integrity to be licensed as a casino employee, N.J.S.A. 5:12-89b(2).

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The facts are undisputed. On November 21, 1975, petitioner was arrested in Pleasantville and was charged with Conspiracy (comparable to N.J.S.A. 2C:5-2) and Extortion (comparable to N.J.S.A. 2C:20-5). Police reports pertaining to this incident state that petitioner, with others, made threatening telephone calls to various convenience stores, demanding money from employees and threatening them if they did not cooperate. Petitioner was indicted on these charges, and the indictment was dismissed on September 16, 1976. At the hearing he acknowledged the threatening phone calls and attempts to extort money.

On November 7, 1978, February 15, 1979, and March 25, 1979, petitioner was arrested in Long Beach, California, and was charged with Public Intoxication (comparable to N.J.S.A. 2C:2-8). No record of disposition is available in these matters. Petitioner recalled the incidents generally, but could not remember how they were resolved.

On October 19, 1979, petitioner was arrested in Long Beach, California and was charged as an Accessory to Extortion (comparable to N.J.S.A. 2C:2-6 and N.J.S.A. 2C:20-5). Police reports relate that petitioner allegedly gave false information leading officers to believe that he was the victim of an extortion scheme. Petitioner was found guilty and received a two-day jail sentence in connection with his incident.

On January 29, 1980, petitioner was arrested in Pleasantville, New Jersey and was charged with Criminal Attempt (N.J.S.A. 2C:5-1) after he sought to obtain $5,000 with a forged check from the First National Bank of South Jersey. He was indicted for one count of Forgery, one count of Uttering a Forged Instrument, and one count of Attempted Theft by Deception. He entered a retraxit guilty plea, to the second count of Uttering a Forged Instrument, and he was sentenced to two years probation and was assessed a $50.00 penalty payable to the Violent Crimes Compensation Board. The other two counts were dismissed.

On June 7, 1984, petitioner was arrested in Los Angeles, California and was charged with Drinking in Public (comparable to N.J.S.A. 2C:2-8). On July 17, 1984, petitioner was arrested in Los Angeles, California for Failure to Give Account of Himself. No record of disposition is available in either matter, and again petitioner could not recall how the matters were resolved.

On August 8, 1984, petitioner was arrested in Los Angeles, California and was charged with Unlawful Cruelty to a Child (comparable to N.J.S.A. 2C:24-4). The police reports in evidence indicate that officers observed petitioner hitting a small child with a belt. Petitioner was drunk at the time. He told the police that the child was his son and that the two of them had been living on the streets. He indicated that the child's mother had left approximately one month before and that he did not know where she was. The arresting police officers observed numerous marks on the child's buttocks as well as old scabs on the boy's top lip and nose. Respondent's investigation revealed that petitioner received a 24-day jail sentence in connection with this incident. Petitioner explained at the hearing that the child had run into the street and he was spanking him. He acknowledged that he was drunk at the time.

On October 9, 1985, petitioner was arrested in Los Angeles, California and was charged with Battery (comparable to N.J.S.A. 2C:12-1a). Police reports indicate that he was outside the Merv Griffin Studios and approached various members of the audience, staggering and smelling heavily of alcohol. When confronted by a security guard, he spit in the guard's face and used profanity. On January 21, 1986, petitioner was arrested in Los Angeles, California and was charged with Challenging to Fight (comparable to N.J.S.A. 2C:29-2). According to police reports, he threw a punch at the same security guard who was involved in his previous arrest at Merv Griffin Studios. No disposition is available for either incident. Petitioner testified that he was drunk in that area frequently and argued regularly with one guard in particular. He testified that it was a mark of his illness that he felt the guard was picking on him.

On May 15, May 21, and June 5, 1986, petitioner was arrested in Los Angeles and was charged with Public Drunkenness (comparable to N.J.S.A. 2C:2-8). No disposition is available with regard to these incidents. Petitioner recalled them vaguely.

Petitioner testified that he is 32 years old and now lives with his mother. He became an alcoholic in high school and abandoned all sense of responsibility. He testified that while he did not recall some of the incidents for which he was either arrested or convicted, he did not deny his long history of involvement with law enforcement. He disclosed all of this on his personal history disclosure form (PHDF) and in his interview with respondent's agent. He testified that he moved back and forth from California to Pleasantville over the course of a decade. He began to realize he had a drinking problem

in the fall of 1986 and he checked into a 28-day rehabilitation program. A letter from the Maryville Alcoholism Rehabilitation Center in Williamstown, New Jersey, supporting this testimony was placed in evidence. Petitioner testified that he has not had a drink since entering this program. After leaving Maryville, he attended Alcoholics Anonymous regularly until recently. Petitioner works the 10:00 a.m. to 6:00 p.m. shift at the Showboat Hotel and Casino in the housekeeping department. He has worked there for two years. One night a week he works from approximately 2:00 a.m. until 9:00 a.m. at the Executive Cleaning Service. Most recently he has also obtained a part-time night job at the Ponderosa Steakhouse. Employee performance appraisals from the Showboat were entered into evidence and they indicate that petitioner's supervisors think highly of his ability and dedication. Petitioner testified that he has not missed a day of work since coming to the Showboat and that he has been promoted to supervisor. Although he is around liquor and money all the time, he has not been tempted by either. He has become a trusted employee and this is what is important to him. He testified that a casino employee license would help advance his career.

Petitioner's mother testified that he had been a good student in high school until he became an alcoholic. After his father died in the fall of 1986, he was able to give up drinking and this has changed everything. Petitioner also submitted character letters. This is the substance of the record.

Petitioner was a fully credible witness and he acknowledged his prior criminal and antisocial behavior openly. He has worked with success for two years in the casinos and has had no involvement with law enforcement during this period. He appears to have overcome his problem with alcohol, which was responsible for his prior behavior. From all appearances he is now a well-directed individual.

Based on the foregoing, it is my conclusion that petitioner has established by clear and convincing evidence that he is a person of good character, honesty and integrity and it is **ORDERED** that he be awarded a casino employee license.

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

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

1/9/89
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

1/10/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 12, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Joseph D. Taliaferro
petitioner's mother

EXHIBIT LIST

P-1	Letter dated December 15, 1986, to "To Whom It May Concern"
P-2	Letter dated July 9, 1988, to "To Whom It May Concern"
P-3	Showboat Employee Performance Appraisal
P-4	Work Performance
R-1	Arrest Report
R-2	Atlantic County Superior and County Court Criminal Record
R-3	Long Beach Police Report
R-4	Long Beach Police Report
R-5	Long Beach Police Report
R-6	Long Beach Police Report
R-7	Pleasantville Police Department Reports
R-8	Arrest Report and Investigation
R-9	Arrest Report and Investigation
R-10	Arrest Report and Investigation
R-11	Arrest Report and Investigation
R-12	Arrest Report and Investigation
R-13	Booking and Property Record
R-14	Booking and Property Record
R-15	Booking and Property Record

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-257
APPLICATION NO. 68672-21
OAL DOCKET NO. CCC 5874-88
ORDER NO. 89-11-10

APPLICATION OF JOHN N. TAYLOR, III ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 15, 1989,

IT IS on this 30th day of March 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 4/5
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5874-88
AGENCY DKT. NO. 88-EA-257

JOHN N. TAYLOR, III,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

John N. Taylor, III, petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for respondent (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Record Closed: January 6, 1989 Decided: January 27, 1989

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

John N. Taylor, III, seeks licensure as a casino employee (casino teller). By letter of April 29, 1988 addressed to the Casino Control Commission, the Division of Gaming Enforcement opposed licensure. Mr. Taylor requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on October 6, 1988. A Prehearing Order was issued on October 18, 1988. A hearing was held before Administrative Law Judge Jeff S. Masin at the Bridgeton City Hall on December 20, 1988. The record closed upon receipt of a letter from Mr. Taylor's senior probation officer on January 6, 1989.

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ISSUES

The Prehearing Order identified the issues for consideration in the hearing. Specifically, the Division contested whether Mr. Taylor had engaged in conduct constituting an automatic disqualification from licensure, pursuant to N.J.S.A. 5:12-86c(1). The Division's allegation of an automatic disqualification was based upon an alleged conviction for aggravated assault and criminal mischief entered on January 23, 1986. In addition, the prehearing identified the issue of rehabilitation from any automatic disqualification, as permitted under N.J.S.A. 5:12-90h. Although the Prehearing Order did not specifically identify the issue, the Division's letter to the Commission did identify an additional issue of whether Mr. Taylor had the requisite good character, honesty and integrity required for licensure by N.J.S.A. 5:12-90b, incorporating the standards of section 89b(2). This issue will also be considered as the evidence and the statutory scheme demand that it be addressed.

EVIDENCE

John N. Taylor, III, testified concerning the matters raised in the Division's letter. Specifically, with respect to the alleged conviction for aggravated assault, Taylor acknowledged that he had been convicted upon his plea of guilty to Indictment No. I-910-12-85 issued by the Cumberland County Grand Jury charging that on September 6, 1985, he had "purposely and knowingly caused bodily injury to Robert Speed with a deadly weapon, to wit, a knife." This constituted a violation of N.J.S.A. 2C:12-1(b)(2). Speed acknowledged his plea of guilty, which occurred on January 23, 1986. On April 8, 1986, he was sentenced on Count I of the indictment to a probation period of five years with a condition of probation that he pay restitution to the probation department in an amount not to exceed $500 for any bonafide unpaid medical bills of the victim, with any unused restitution balance to be applied as a fine. The restitution was to be paid at a rate of $10 a week. In addition, a penalty of $25 was assessed for the Violent Crimes Compensation Board.

According to Mr. Taylor's testimony, he no longer is required to report to the probation office on a regular basis. A letter received from Debora B. Krawiec, Senior Probation Officer for the Cumberland County Probation Office, who is Mr. Taylor's probation officer, indicates that he has "reported on a fairly regular monthly basis and no

new arrests have been noted. Krawiec proceeds to note an outstanding balance of $300 on the $500 court order restitution and no payment on this amount since September 7, 1988." She adds:

> "If regular payments are not received soon, a Violation of Probation will be filed. Mr. Taylor has had a little under (3) three years to pay this fine in full."

According to Taylor's testimony, the incident involving Mr. Speed occurred in the early morning hours. He and Speed knew each other from the neighborhood and did not get along very well. Speed was not produced as a witness and the only other evidence concerning the incident was a Bridgeton Police Department Report filed by Patrolman Ronnie B. Watford. Watford reports information received from Speed's sister, who had apparently called in a report that her brother had been cut. The report contains the hearsay version of Ms. Matthews and Mr. Speed. Of course, while there is no question but that an incident occurred resulting in a aggravated assault to which Mr. Taylor pled guilty, the exact details of the incident are only revealed by the hearsay statements in the police report. While reasonable men might review such a document in the course of determining a matter of this nature and therefore the document is admissible in evidence pursuant to the Act's standard as set forth in N.J.S.A. 5:12-108, how much weight is to be given to the purported details of the incident as described by the victim and his sister is questionable. Nevertheless, according to the report, the victim observed Taylor and a female named Terry Mason fighting. Mason was allegedly nine months pregnant at the time. The victim purportedly tried to stop the fight and in the course of a scuffle was stabbed in the right arm and cut on the left forearm.

In addition to the aggravated assault matter, Mr. Taylor also addressed other arrests. One of these occurred on December 11, 1985, when he was arrested for creating a disturbance. According to Taylor, he was also charged with escape, which only involved his standing up while talking to the police and being pulled down by five police officers. He asserted that incident arose from a "little argument." Apparently, according to a police report by Patrolman Jeffrey C. Wentz of the Bridgeton Police Department, he was on patrol at approximately 3:30 in the afternoon when he observed three individuals talking in a loud matter on the street. When he proceeded to these men, he noted Taylor and a Mr. Williams were engaged in a face-to-face screaming match. He ordered the subjects to "break it up and leave the area." One of the men in the confrontation left, but

Taylor then took a swing at him. The other man backed off, but Taylor scuffled and was placed in handcuffs. The third man then became involved. In the police station, Taylor purportedly tried to leave when the police learned of an outstanding warrant and when grabbed, a struggle ensued which resulted in Taylor being knocked to the ground with a police night stick. The police officer suffered a fractured Distal 4th Phalynx as a result of this incident. Taylor was found guilty of a violation of disorderly conduct, N.J.S.A. 2C:33-2(a), and sentenced to 30 days in the county jail and $25 costs. A downgraded charge of violation of N.J.S.A. 2C:29-5, escape, was dismissed.

On May 14, 1987, Taylor was arrested on a charge of terroristic threats, a violation of N.J.S.A. 2C:12-3. The complainant was Terry Mason, who is now deceased. She claimed that Taylor, who is the father of her babies, had threatened to kill her and held the knife to her throat during an incident in which she and he were disputing her intention to go out of the house and he allegedly became angry. According to Taylor, this matter was later dropped when Ms. Mason withdrew her complaint. He claimed that at the time of the incident, they were arguing in the kitchen. He knew that she wanted to go out partying with her girlfriends and thought that she should be staying home with the children. At the time of the argument, he was cutting chickens and he did hold up the knife, although he did not hold it to her throat.

On July 28, 1987, Taylor was arrested for allegedly beating Ms. Mason. According to his version, he caught her in bed with another man and beat the man and then fought with Ms. Mason. The charges were later dropped. According to the police report filed by Patrolman A. Garron of the Bridgeton Police Department, Garron received information from the victim and Ms. Mason's cousin, one Sara Jacobs, indicating that Taylor had broken into Mason's apartment, assaulted her male companion, who fled, and then dragged her by her hair out of the apartment and to his car, a distance of approximately 70 feet, where he allegedly placed her and then drove her to a wooded area where he threw her to the ground, beat her and kicked her in the vaginal area. The police report noted the appearance of blood stains in the back of the pants in the crotch area.

Mr. Taylor has not been arrested since July 1987, with the exception of an incident in June or July 1988 when he was charged with having an open container of liquor on the street and was fined.

Taylor is 23 years old. He has a three year old and a 20 month old child. Ms. Mason was the mother of both of these children. She died of epileptic seizures on April 23, 1988. Taylor has one of the children in his custody and the other is in the custody of Ms. Mason's mother until he finds a place to live. At the time of the hearing, he was employed by Mediastat of Vineland, packing metal in boxes at $4.35 an hour. He had worked at this company for a week and one half. He was unemployed before that since October 1988, having worked at the Wheaton Glass Company for about one month before that. He also was employed at Progresso's for four months, but was let go because he missed a snow day.

The applicant has been on welfare. He has attempted to reduce his drinking, a habit which he has had since he was 17 or 18 years old. He "gets a little temper when he drinks" and has begun to realize what happens from the drinking. He denied that his drinking had anything to do with his relatively short periods of employment. He now drinks beer but no wine or liquor. Taylor supports his children to the best of his ability.

DISCUSSION

Mr. Taylor was convicted of aggravated assault and sentenced on April 8, 1986. Aggravated assault is a violation of N.J.S.A. 2C:12-1(b)2. This offense involves an "attempt(s) to cause or purposely or knowingly cause(s) bodily injury to another with a deadly weapon." Aggravated assault constitutes an automatic disqualification from licensure pursuant to N.J.S.A. 5:12-86c(1). There is no dispute from Mr. Taylor as to the circumstances of the incident for which he was convicted. While he claims that the cutting occurred in the course of a fight, the conviction for the offense obviates any suggestion that he was not the aggressor, or at least in equal combatent in the proceeding. As such, the conviction bars his licensure unless he has established rehabilitation by clear and convincing evidence. I **FIND** that he has not.

Although Mr. Taylor has been on probation for a five-year term since sentencing in April 1986, he has failed to avoid confrontations and physically aggressive behavior since that time. While he has never suffered a violation of probation for these incidents, it appears that because of his life circumstances, his drinking, his short temper, or whatever, he has, by his own admission run afoul of the police. While much of the evidence concerning the specifics of the incidents involved constitutes hearsay presented

in the form of police reports containing hearsay versions of what occurred from alleged victims and witnesses, as opposed to police officers who actually witnessed the incidents, there is enough about the information in the reports and Taylor's own testimony to give some substance to the stories told in the police reports. While he did not specifically admit having held a knife to Ms. Mason's neck, he did admit having raised a knife toward her. Whatever the motivation for his dispute with her, and it appears that they had a rocky relationship, his actions certainly were sufficient to constitute assaultive behavior even if no actual battery occurred.

In addition to the incidents of May 14 and July 28, 1987, which postdate the sentencing on the aggravated assault charge, Taylor has also failed to make substantial payments on his $500 quarter order restitution. While this may be the result of his minimal and sporadic employment, he does have an obligation and his failure to comply with the restitution order within the allotted time would certainly be a detriment to any finding of rehabilitation.

Based on the evidence presented, and considering the nature of the assault involved, the seriousness thereof, the circumstances under which it arose, the applicant's conduct since that time, his sporadic work record, his admission of some degree of problem with intoxicants, the use of which while he claims to have cut back on he has not apparently decided to eliminate, and his limited repayment of restitution, I **FIND** that Mr. Taylor has not sustained his burden of proving by clear and convincing evidence that he has rehabilitated himself from the automatic disqualification.

With respect to the question of good character, honesty and integrity, which is an issue which is necessary to face in connection with casino employee licensure, I **CONCLUDE** that at this point in time it is impossible to determine by clear and convincing evidence, as required by the statute, that Taylor has the requisite good character, honesty and integrity for licensure. The aggravated assault incident constitutes a negative on his character of a substantial nature. In addition, whatever his difficulties with the late Ms. Mason, it appears that his conduct toward her, and toward others who were in contact with her, as well as his conduct with the police in 1985 during the scuffle which result in an injury to a police officer, all demonstrate a streak of assaultive conduct which constitutes a strong limitation upon any good character finding.

Based on the above, I **CONCLUDE** that the petitioner has failed to establish his good character, honesty and integrity to the required level and has also failed to show that he has rehabilitated himself. To some degree there is a correlation between the ability to find good character, honesty and integrity at this time and to find rehabilitation, for if the good character, honesty and integrity is not established by clear and convincing evidence, there can, as a practical matter, be no finding that rehabilitation has occurred, at least where a casino employee license is involved.

Based on the above, I **CONCLUDE** that the application for licensure must be **DENIED.**

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

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

Jan. 27, 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/30/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 1 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

On behalf of respondent:

R-1 Police Report from Bridgeton Police Department, dated September 6, 1985

R-2 Indictment No. I-910-12-85

R-3 Judgement of Conviction, State of New Jersey v. John Taylor, Reference: Indictment I-0910-12-85

R-4 Bridgeton Police Department Report, dated September 11, 1985 (2 pp.)

R-5 Bridgeton Police Department Arrest Report, dated September 11, 1985

R-6 Letter of December 14, 1988, from Janine Opperman, Court Administrator, Bridgeton Municipal Court

R-7 Bridgeton Police Department Report of May 14, 1987 (2 pp.)

R-8 Bridgeton Police Department Arrest Report of May 14, 1987

R-9 Bridgeton Police Department Report of July 28, 1987 (2 pp.)

R-10 Personal History Disclosure Form-2A, dated August 18, 1986

Court Exhibit:

C-1 Letter of January 5. 1989, from Debora B. Krawiec, Senior Probation Officer, Cumberland County Probation Office

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-322
VENDOR I.D. NO. 21990
OAL DOCKET NO. CCC 3768-88
ORDER NO. 89-17-16

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
TOM'S TRAVEL, INC., THOMAS R. CALLICOTTE AND ADAMAR OF NEW JERSEY, INC.,	:
Respondent.	:

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 26, 1989,

IT IS on this 1st day of May 1989, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Tom's Travel, Inc. and Thomas A. Callicotte each pay a civil penalty in the amount of $10,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

ORDER NO. 89-17-16

IT IS FURTHER ORDERED that Tom's Travel, Inc. and Thomas Callicotte are prohibited from conducting any business, either directly or indirectly, with any casino licensee, any casino agent or any employee acting on behalf of a casino licensee until further order of the Commission.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3768-88
AGENCY DKT. NO. 88 - 322

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
TOM'S TRAVEL, INC.,
THOMAS R. CALLICOTTE and
ADAMAR OF NEW JERSEY, INC.,
T/A TROPICANA HOTEL AND CASINO,
Respondent.

Barth Aaron, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
No one appeared for Tom's Travel, Inc., Thomas R. Callicotte and Adamar of New Jersey, Inc.

Record Closed: January 30, 1989 Decided: March 10, 1989

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE

On November 5, 1986, the Commission denied the application of Thomas R. Callicotte for casino employee licensure. In its Order, the Commission also ordered that Callicotte "was prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act..." Nevertheless, on March 25, 1987, Thomas R. Callicotte obtained a vendor's registration for an entity known as Tom's Travel Inc. and did business with Adamar,

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t/a Tropicana. For this violation of the Commissioner's Order, the Division seeks sanctions.

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on April 6, 1988, seeking sanctions against Tom's Travel, Inc. (Tom's), a/k/a Lilburn Travel, and Thomas R. Callicotte (Callicotte). The relief sought included a fine predicated on profits and an order restraining Tom's and Callicotte from doing business with respondent Adamar of New Jersey, Inc. (Adamar) t/a Tropicana Hotel and Casino, and all other casino licensees. The Division also sought an order voiding agreements between Tom's and respondent Adamar.

The respondent Adamar did not request a hearing because no punitive sanctions were demanded against it. The respondent Tom's, and its principal, Callicotte, did request a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on May 23, 1988, to be heard as a contested case pursuant to N.J..S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 14, 1988, by telephone in which Tom's and Callicotte participated; Callicotte appearing personally and as agent for Tom's.

A prehearing Order issued on July 25, 1988, which, among other things, set a plenary hearing date of December 5, 1988. On December 5, 1988, neither Callicotte nor Tom's appeared.

The Deputy Attorney General accordingly demanded judgment in favor of the Division. He also requested that the record remain open in order to prove the amount of profits upon which the Division sought to impose a fine. He had intended to elicit this information from the respondent Callicotte at the hearing since Callicotte had failed to answer interrogatories.

On December 27, 1988, the Division filed a certification with the OAL demanding a fine of $10,000 and disgorgement of profits in the amount of $17,684.00 against both Tom's and Callicotte. On January 30, 1988, the Division filed a certification of service reflecting the proper mailing to the respondents

Tom's and Callicotte of copies of the certification demanding a fine and disgorgement and a memorandum of law. A certified mailing was returned unclaimed, a first class mailing was not returned. The two respondents agreed in the prehearing conference, as reflected in paragraph III of the prehearing order, to accept service by ordinary mail.

On February 8, 1989, a Georgia attorney filed a sworn statement with the OAL on behalf of Callicotte alleging that the said Callicotte has "twice undergone bypass heart surgery and physical he (sic) cannot handle the attendant pressure associated with this pending complaint." He also alleged that at all relevant times stated in the complaint that Thomas Callicotte "was a prisoner in a United States Penitentiary in Atlanta, " was undergoing a divorce and was judicially restrained from acting on behalf of Tom's . He further alleged that Callicotte's former wife, Elaine Callicotte, operated the business at all relevant times mentioned in the complaint. Finally, the sworn statement alleged that Tom's was insolvent and the attorney claims he advised Tom's to file for bankruptcy.

DEFAULTS

In this case, the respondents Tom's and Callicotte have defaulted. In New Jersey, trial judges must indulgently view plaintiff's proofs after a default. *Heimbach v. Mueller*, 229 N.J. Super. 17 (App. Div. 1988) . Administrative Tribunals should exercise the same indulgence.

FINDING OF FACT

I **FIND** that Callicotte, doing business as Tom's and Lilburn Travel, from November 5, 1986 until April 18, 1988, when he stopped doing business with Adamar, sponsored 8,842 patrons as a travel agent to the Tropicana. The average head fee paid by patrons to Travel agents is $20.00. Using this average figure, total head fees collected by Tom's and Callicotte were $17,684.00.

I **FURTHER FIND** that Tom's and Callicotte have constructively admitted the allegations of the complaint by failing to answer interrogatories and by failing to appear at the plenary hearing.

Tom's and Callicotte requested a hearing after service of the complaint. They appeared, albeit by telephone, for the prehearing conference. They agreed at that hearing to accept service by ordinary mail. The Division served them with notice of the fines and disgorgement sought by ordinary mail and certified mail. A Georgia attorney responded to the notice on behalf of Callicotte by way of a sworn statement. I therefore FIND that Tom's and Callicotte were properly served with notice of the sanctions sought by the Division.

LAW AND DISCUSSION

In addition to an Order voiding any agreements between Adamar and the respondents Tom's and Callicotte, and the entry of a Cease and Desist Order pursuant to N.J.S.A. 5:12-129(7), the Division seeks to impose a fine on Callicotte, who is neither a licensee or registrant and disgorgement of profits from both Callicotte and Tom's. Restitution and disgorgement are similar concepts. They require the return of something illicitly acquired to the injured party. Restitution is a permitted sanction against licensees and registrants. N.J.S.A. 5:12-129(6).

The statute also permits fines. N.J.S.A. 5:12-129(5). In an unreported opinion decided December 8, 1988, the Commission imposed fines upon unlicensed and unregistered persons who were principals of a company, debarred from doing business with a casino, who did so through a third company registered with the Commission. *Division of Gaming Enforcement v. L. & S. Steel Service, Inc., et al* OAL Dkt. No. CCC 6062-87, Agency Dkt. No. 88-7.

The statute further provides that sanctions may be imposed in combination. N.J.S.A. 5:12-129(9).

In this case, the Division seeks $10,000 in fines against both Tom's and Callicotte. This is the maximum fine permitted against individuals. N.J.S.A. 5:12-129(5). In addition, the Division requests that Tom's and Callicotte be ordered to disgorge their estimated earnings of $17,684.00.

Obviously the theory of restitution or disgorgement is to make a victim whole. In this case, there is no victim except the State. Adamar is not a victim. It bargained for patrons and got 8,842 of them. The 8,842 patrons also got what they

bargained for; a trip to the casino. The public is not a victim, except in the sense that the State was injured by Callicotte's complete disregard of the regulatory system. But the proper remedy for the State is the collection of fines, and in this matter the statute limits the amount of fines to be imposed upon individuals to $10,000. I therefore **CONCLUDE** that restitution or disgorgement is an inappropriate sanction in these circumstances.

This result is not satisfactory. "(P)enalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business..." *Second Interim Report* Governor's Staff Policy Group on Casino Gaming, February 17, 1977, p. 54. Although the proofs do not support an allocation in this case, fines may be assessed for each and every violation of a regulation. *Div. of Gaming Enforcement v.s. Boardwalk Regency*, 11 N.J.A.R. 29 (1983). *Div. of Gaming v. Greate Bay and DiGiacomo*, 11 N.J.A.R. 151, (1984). Obviously, 8,842 patrons made up many junkets. Each junket was a separate violation, but there is no evidence in the record here of the number of junkets respondents organized.

Sanctions are subject to standards explained at N.J.S.A. 5:12-130. The conduct of the offender must be considered in light of the risk to the public, the integrity of gaming operations, its seriousness, whether it was purposeful and knowingly unlawful, whether it was justified or excusable, the prior history of the offender, any corrective action taken, and finally, if monetary sanctions are sought, the amount of the penalty in relation to the conduct, and the offenders financial ability.

This case involved a substantial risk to the public and to the integrity of gaming operations. A person who was denied licensure, simply by changing his corporate name, continued to do business with a casino and had contact with thousands of casino patrons. This is a serious violation of the law and the spirit of the regulatory system. It was a knowing and purposeful violation motivated solely by greed. The act was unjustified. The excuses offered for the conduct by a Georgia attorney were raised only after heavy monetary sanctions were threatened. They were not made at the prehearing conference or explained in answers to interrogatories. They do not explain Callicotte's signature on the agreements with Adamar. They are not worthy of consideration. Except for the fact that Callicotte was previously denied licensure, there was no evidence, one way or the other,

concerning his prior gaming activity. Callicotte has taken no corrective action with regard to his conduct, the corrective action was taken by Adamar which discontinued its relationship with him after the Division obtained a preliminary order.

The financial means of the respondents Tom's and Callicotte to pay a large fine are unknown. Whether they can pay a large fine however, is not to the point in the circumstances of this case. One purpose of sanctions is their supposed deterrent effect. A large fine will deter Callicotte, Tom's and others, from continuing to do business after loss of licensure.

It is therefore **ORDERED** as follows:

1. Thomas R. Callicotte and Tom's Travel Inc. shall cease and desist from any further business or financial relationship with any licensed New Jersey casino.

2. An agreement between Thomas R. Callicotte, Tom's Travel and Adamar of New Jersey, Inc. dated March 25, 1987 and attachments thereto, is null and void and any payments or services remaining unpaid or unperformed shall not now be paid or performed.

3. Tom's Travel, Inc., shall pay a $10,000 fine to the Casino Control Commission within 60 days of the final decision in this matter.

4. Thomas R. Callicotte shall pay a $10,000 fine to the Casino Control Commission within 60 days of the final decision in this matter.

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

OAL DKT. NO. CCC 3768-88

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

March 10, 1989
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

3/14/89
DATE

[illegible]
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 14 1989
DATE

Jaynee LaVecchia K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

1426

WITNESS LIST

For the Petitioner:

None

For the Respondent:

None

EXHIBIT LIST

For the Petitioner:

P-1 Investigation report of Detective First Class James Gallagher
P-2 Investigation report of Detective Sergeant First Class E. J. Pitko
P-3 Final Order of Commission denying licensure of Thomas R. Callicotte
P-4 Restricted application list page
P-5 Vendor registration form for Tom's Travel, Inc.
P-6 Letter agreement, dated July 25, 1986
P-7 Letter agreement, dated August 21, 1986
P-8 Tropicana memorandum, dated March 4, 1987
P-9 Agreement, dated March 25, 1987
P-10 Letter agreement, dated April 1, 1987
P-11 Atlanta Journal advertisement copy, November 15, 1987
P-12 Tropicana check number 109984 and supporting documents
P-13 Tropicana check number 115330 and supporting documents
P-14 Tropicana check number 117945 and supporting documents
P-15 Certification dated December 22, 1988
P-16 Certification dated January 23, 1989

For the Respondent:

R-1 Sworn Statement dated February 2, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-18
OAL DOCKET NO. CCC 8133-88
(CCC 8220-87 ON REMAND)
LICENSE NO. 40072-21
ORDER NO. 89-22-16

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

Complainant,

v.

ORDER

JUDY ANN TORRES,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision-remand of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 1st day of June 1989, ORDERED that the initial decision-remand is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision-remand, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8133-88
AGENCY DKT. NO. 86-18
(ON REMAND - CCC 8220-87)

DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JUDY ANN TORRES,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Judy Ann Torres, respondent, pro se

Record Closed: March 7, 1989 Decided: April 19, 1989

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

This matter originally was tried before this judge who issued a decision on August 5, 1988.[1] The Casino Control Commission reviewed the decision, and remanded the matter for hearing by Order of October 31, 1988.[2] The original Initial Decision addressed the issue of whether Ms. Torres' casino employee license no. 40072-21 should be revoked because of her alleged misconduct of December 7, 1985, which possibly involved an alleged conspiracy with one Melvin E. Torres, which purportedly resulted in Ms. Torres paying Mr. Torres payments for various hands held by Mr. Torres in the course of

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[1]Attached as Appendix A.

[2]Attached as Appendix B.

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blackjack play at Ms. Torres' work station at Bally's Hotel/Casino where she served as a dealer. She had been arrested and charged with swindling and cheating, in violation of the Casino Control Act, N.J.S.A. 5:12-113 and conspiracy, in violation of N.J.S.A. 2C:5-2. The Initial Decision concluded that while the Division had proven that Ms. Torres did not perform properly as a dealer on December 7, "it has failed to establish by a preponderance of the credible evidence that she was in fact engaging a deliberate scheme with Mr. Torres to enable him to win hands which he should not have won." I concluded that:

> I cannot find that the Division has met the necessary burden of proof which would establish that Ms. Torres acted deliberately, nefariously and conspiratorily such as to be subject to punishment for her actions or that she lacks the requisite good character, honesty and integrity or that her continued licensure would be inimical.

The complaint was dismissed.

In its remand order the Division, after correcting several matters concerning the value of cards dealt during certain of the plays addressed in the Initial Decision, as well as certain technical matters concerning the play, ordered that the following matters be addressed "without limitation," in the remand.

> (1) The Commission's review of the composite videotape of the underlying events revealed two additional incidents of possible misdealing or improper handling of wagers which were not addressed by the parties at the hearing nor cited by the Division in its report of June 14, 1988, nor discussed by the Administrative Law Judge in the initial decision. These incidents, which are found at 14:14:06 and 14:17:11 of the videotape, may have a bearing on the decision in this case, as may the respondent's explanation concerning them. Fairness requires that the issues raised by the complaint or addressed in the initial decision be reconsidered in light of these incidents and whatever explanation may be forthcoming from the respondent; and
>
> (2) With regard to the question of whether the respondent has committed cheating and swindling, it is uncertain from the Commission's review of the initial decision whether the ALJ believed that the Division of Gaming Enforcement was required to prove a conspiracy or the existence of some nefarious arrangement between the respondent and the patron identified as Melvin E. Torres in order to establish a violation of N.J.S.A. 5:12-113. There is no such requirement; and

(3) The Division of Gaming Enforcement should acquire and introduce such further information as may be available regarding the patron identified in this record as Melvin E. Torres, so that the record is sufficiently complete to make an informed decision.

A hearing on the matter was held before Administrative Law Judge Jeff S. Masin on March 7, 1989, at the Galloway Township Municipal Building. It should be noted, because of the circumstances which will be described below, that the parties managed to get to this hearing despite a serious snowstorm and difficult travel conditions. The videotape equipment which was available for use that day was provided by the Galloway Township Police Department. As will be noted below, either because of the nature of the equipment upon which the tapes were viewed, or the conditions of the tapes themselves, there was a great deal of difficulty in observing the incidents identified in the remand Order and the parties were greatly hampered in commenting on them. Because of the difficult weather conditions, and the fact that the matter had been going on for some time, as well as the uncertainty as to whether the tape would be any more clear if viewed on other machinery, the matter was not adjourned, the tapes were reviewed and commented on as best as possible, and the proceeding concluded. Further, because its seems only fair that the parties have full opportunity to comment on the same view of the tapes and that the decision in this case be made upon that view, that is, the one which the parties were able to comment on, I have undertaken no further examination of the videotape following the hearing but have instead relied upon the transcript of the proceedings and the comments and determinations made at the time of the hearing in preparing this Initial Decision.

EVIDENCE

Initially, the remand Order required review of an incident which occurred at 14:14:06 on December 7, 1985. Detective Ronald Bunkowski of the New Jersey State Police, who was the witness at the original hearing and who is assigned to the Division of Gaming Enforcement, testified concerning the incident. According to his rendition, when the hand was dealt, the dealer had an ace showing. The patron in question, that is, Mr. Torres, in the second place at the table, hit a 21. According to Bunkowski, in observing the videotape at the time of the hearing, he himself could not be certain that Torres in fact had received a 21, but having seen the tape earlier on other machinery, he was sure

that that had occurred. The judge observed the tape and commented in the transcript as to the difficulty in making out the cards. Any any rate, according to Bunkowski, Torres made an insurance bet. At the time he was playing two hands, but he only made one insurance bet. The insurance bet was on his other hand. According to Bunkowski, what occurred at this point was that when Ms. Torres paid off the insurance bet, she should have paid it out of the rack, but instead she took the two losing bets and used the chips from those bets to pay the insurance bet. In Bunkowski's words, this is "an administrative violation" there is "no cheating involved here." Bunkowski then explained that the payment should have been made out of the rack to avoid any overpayment to the patron. However, he could not tell from looking at the tape whether an overpayment occurred in this case.

Ms. Torres commented on the incident and essentially agreed with Bunkowski. Actually, in her experience, when

> they were first starting out, you did have to take it out of the rack, and there is lots of bets you have to do that in. But in this particular hand, you can pay, you can just come out with both hands and pay from this, you know, particular bet. You can do that, though. I've seen it done many times in different casinos. Plus, this particular one, by other dealers. I've never been, you know, commented on per my floor person to mention that I wasn't allowed to do it.

In further explanation of the incident, Bunkowski explained that he believed that Torres was overpaid. He then said

> I can't tell the amount bet, but what he should have got was two to whatever he bet. He should have got twice the amount. I believe he got four times amount." . . . Because — this is what I'm saying about taking the money off and then paying it out of the rack.
>
> First of all, administratively, it's too confusing to do what she's doing. She should have taken both off the table. They were both losing bets because the dealer had blackjack. Then she should have paid two to one, whatever the insurance bet was. I believe that Ms. Torres paid four to one on that because she gave both the original bets back to the player, and she shouldn't have. She should only have gave one.

Ms. Torres was asked if she agreed or disagreed with this observation and indicated that "with what I can see, I can't disagree."

With respect to the incident at 14:17:11, Detective Bunkowski explained that the "tape is horrible." He was unable to make any observations of what was occurring and only had information from a report. It was impossible for any of the observers at the hearing, including the respondent, to make any clear examination of what the tape contained as to this incident and therefore it was impossible for Ms. Torres to comment on what had occurred.

After several attempts at viewing the tape, and Bunkowski's agreement that he could not really tell what was occurring, the Administrative Law Judge ruled that he would not consider the incident in this proceeding because of the fundamental unfairness of asking Ms. Torres to defend herself on this matter when she had no ability to observe what was on the tape and comment thereon. It should be noted in connection with this determination, that the court took into account the weather conditions, travel conditions and such and considered that it would be unfair to ask the parties to return again for another hearing given the delay in these proceedings and the limited likelihood that view of this additional incident would add anything significant to the overall picture of what had occurred on the day in question.

Finally, with respect to the Commission's third comment as to the Division acquiring additional information about Melvin E. Torres, Mr. Fusco, on behalf of the Division, informed the judge that no additional information was available as to Mr. Torres.

DISCUSSION

I have considered the additional incident of 14:14-06 and the apparent likelihood that Ms. Torres overpaid Mr. Torres in this incident. I have also considered the corrections and modifications made to the Initial Decision which are contained in the second portion of the remand Order. Apparently, in connection with the incident at 14:10:02, the modification indicates that the dealer played the hand correctly, thus eliminating it as a likely indicator of any misdeed on her part.

In the previous decision I concluded that the Division had failed to establish that Ms. Torres had purposely engaged in any activities which were intended to result in Melvin E. Torres obtaining payment for hands on which he should have lost, although clearly because of her errors he did in fact get paid when he should not have. I further concluded

that there was insufficient evidence to establish any conspiracy between Mr. and Ms. Torres and that there was insufficient evidence to show that there was in fact any relationship between them of any kind other than as player and dealer on a particular day in question. No additional evidence concerning Mr. Torres has been produced and therefore I **FIND** no reason to change my conclusion on that subject. In addition, the one new incident which has been observed, while indicating Ms. Torres' lack of care on the day in question, does not change my conclusion that her problems on December 7 were not related to some determination on her part, with or without consultation or agreement with Mr. Torres, to effectuate payments to him which were improper.

Having considered the above, and the material contained in the original Initial Decision, my determination as to Ms. Torres' overall credibility remains that in fact she did not feel well on the day in question, that she did not tell Detective Bunkowski that Mr. Torres was her cousin, that the Division failed to establish that they were actually related or engaged in any scheme or plan, and that further, the Division failed to establish by the requisite preponderance of the evidence that she was guilty of swindling and cheating or for that matter that she had any intent to improperly pay Mr. Torres or any other patron on the day in question. I **CONCLUDE** that Ms. Torres did not feel well, that she expressed a desire not to work that day, that instead she was required to work, that she was having difficulty with her eye, and that the combination of various factors led her to have an extremely poor day in the pit.

For the reasons expressed, the complaint against Ms. Torres is **DISMISSED.**

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

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

Apr. 19 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

4/20/89
DATE

Kimberly Woods /K. S.
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 21 1989
DATE

James LaVecchia /K. S.
OFFICE OF ADMINISTRATIVE LAW

ds

APPENDIX A

INITIAL DECISION
OAL DKT. NO. CCC 8220-87
AGENCY DKT. NO. 86-18

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
JUDY ANN TORRES,
Respondent.

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

Judy Ann Torres, respondent, pro se

Record Closed: June 27, 1988 Decided: August 5, 1988

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

The Division of Gaming Enforcement ("Division") filed a complaint on January 13, 1986, with the Casino Control Commission ("Commission") charging that Judy Ann Torres, holder of a casino employee license number 40072-21, who had been employed up until December 7, 1985, at Bally's Hotel/Casino as a dealer had, on December 7, 1985, been arrested and charged with swindling and cheating, in violation of the Casino Control Act ("Act"), N.J.S.A. 5:12-113, and conspiracy, in violation of N.J.S.A. 2C:5-2. The complaint charged that on December 7, 1985, the respondent had been involved in a conspiracy with

Melvin E. Torres which resulted in Ms. Torres paying Mr. Torres payments for various hands held by Torres in the course of black jack play at Ms. Torres' work station.[1]

The complaint charged that Torres' conduct indicated that she lacked the requisite good character, honesty and integrity required for casino employee licensure under N.J.S.A. 5:12-90b, incorporating the standards of 89(b)2, and further charged that her continued licensure would be inimical to the Casino Control Act and to casino operations, thus requiring revocation pursuant to §86(c)4 of the Act.

Ms. Torres requested a hearing on the proposed revocation of her license and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Following transmittal, a prehearing was held on February 25, 1988, and a prehearing order was issued on February 26, 1988. The prehearing established the issues for consideration at the hearing as to whether Ms. Torres had engaged in conduct on December 7, 1985, constituting a per se disqualifying offense pursuant to §86(c)1 of the Act, whether she lacked the requisite good character, honesty and integrity, and whether her continued licensure would be inimical. The prehearing further recited that the Division would proceed pursuant to its authority in §86g of the Act in that the incident was not the subject of criminal prosecution.

A hearing was held before Judge Masin on April 29, 1988, at the Office of Administrative Law in Atlantic City. At the conclusion of the hearing, the Judge ordered that additional surveillance tapes which were in the possession of the petitioner and which had not been offered as evidence in the hearing were to be viewed to determine whether they revealed actions on the part of Ms. Torres which might indicate that she had committed errors or otherwise made inappropriate payments on hands to patrons other than Mr. Torres during her tour of duty on December 7, 1985. This procedure was accomplished and a report generated as a result of the state police review of the tapes. That report, dated June 24, 1988, was presented to the administrative law judge and in a telephone conference of June 20, 1988, the parties discussed the possiblity of further hearings or review of the tape by Ms. Torres. She indicated, after being informed of the results of the review conducted by Detective Robert A. Ebberup of the State Police, that

[1]Whether Mr. and Ms. Torres are related is a subject of some dispute in this hearing.

it would not be neccessary for her to review the tapes. A copy of the memorandum was sent to Ms. Torres by letter of June 20, 1988, with instructions that if she objected to the introduction of the document, she was to indicate her objection within seven days. No response to the June 20, 1988 letter has been received as of the date of this initial decision and therefore the record of this matter closed on June 27, 1988.

When Ms. Torres examined the original composite tape presented as evidence at the hearing held on April 29, 1988, she reviewed the instances of improper dealer action identified by Detective Ronald Bunkowski of the Intelligence Bureau of the State Police and essentially agreed that she had acted incorrectly in connection with most, if not all, of the incidents pointed out by Bunkowski. However, despite her agreement as to the mistakes which she made, Ms. Torres alleged that the mistakes did not arise out of any conspiracy, agreement, or understanding with Mr. Torres, who she claimed she did not know. Instead, she indicated that as a result of illness on the day in question, which she contended she had advised her supervisors and patrons about, she had mishandled numerous transactions with both Mr. Torres and in addition with other patrons, these latter transactions not shown on the composite tapes. The state police review of the two additional tapes, conducted by Detective Ebberup and John Maggiore of the Bally's Surveillance Department, identified two instances where the dealer made mistakes with players other than Torres. In addition, that review identified four additional "infractions" involving Mr. Torres which had not been noted during previous reviews of the composite tape. Ms. Torres has not indicated any desire to further examine the additional tapes so as to attempt to identify additional mistakes involving players other than Mr. Torres.

Detective Bunkowski testified that on December 7, 1985, he was called to Bally's surveillance concerning a possible dealer/agent scam. He reviewed tapes supplied by the supervisor of surveillance and after the review he arrested both Mr. and Ms. Torres. Mr. Torres was taken to the Bally's surveillance office and after being given his rights, he was questioned concerning payment on losing bets. He denied that he had ever seen Ms. Torres before and acknowledged that he was aware that he had been paid on some losing hands. A complaint was signed against him. Ms. Torres was then questioned and after being given her rights she indicated that she had felt ill at the time of the incidents from gas and diarrhea and that it could be quite possible that she had made the mistakes. According to Bunkowski's testimony, during her questioning she identified Mr. Torres as a "distant cousin" who she saw on infrequent occasions on the floor of the casino. She

denied any collusion with him. She further indicated that she often caught herself making overpayments.

Detective Bunkowski determined that Floorperson Ed Farrel, who was Torres' supervisor, had noted that while she was working in game 281 she appeared very nervous and he noted that she paid Torres twice on the same hand. He notified his pit boss, who advised the casino manager. Surveillance was alerted and began observing Ms. Torres. Mr. Farrel told Bunkowski that Ms. Torres was a very good dealer. He also denied that she had advised him that she had been feeling ill.

Detective Bunkowski then reviewed the composite tape which was prepared from the surveillance tapes of Ms. Torres' dealing. He explained the types of errors made by the dealer during the incidents, which began at approximately 13:27 (1:27 p.m.) and continued up to Ms. Torres' arrest, which occured at 14:26:03 (2:26:03 p.m.).

It should be emphasized that the composite tape does not show the faces of those involved. Ms. Torres acknowledged that the tape probably did show her dealing. Detective Bunkowski, who as noted was present during some of the surveillance, identified the table position of the individual observed playing to whom the improper payments were allegedly made. There is no opportunity to observe the faces of the respondent or the alleged agent on the tape.

THE INCIDENTS

The first incident identified occurred at 13:27:04. Mr. Torres is described as playing at a position located in the middle of the screen. According to Bunkowski the bet placed by Torres was four $5 chips, the color of which could be identified from the original tape although it cannot be identified on the surveillance tape. As a result of the play of the hand, Ms. Torres paid off $50 on this $20 bet.

The second incident occurred at 13:37:02. On this hand Mr. Torres has a 17 and the dealer, Ms. Torres also has a 17. This is known as a push bet, where the house and the patron have equal numbers between 17 and 21. There is no winner and no loser on such hands and chips stay in front of the patron. Instead of this occurring, the tape shows that the dealer paid a $10 red chip as identified by surveillance, when she should not have.

Ms. Torres was sworn at this point in the proceedings so that she could comment on each of the transactions as they were shown by Bunkowski. In connection with this incident she agreed that she made a payment and said that apparently she assumed that the patron had an 18 rather than a 17, which would have authorized a payment for him.

The next incident occurred at 13:37:55. The patron has a 14 and the dealer a 17, which requires that she stick. She paid a $20 payment. According to Ms. Torres' explanation she did not initially pay. The patron had his hands on the table and there was a question raised as to whether he had been requesting another card. She yelled to the floorperson who told her to pay. Bunkowski disputed this by noting that the patron was seen to wave off as if he did not want additional cards. A patron is not supposed to orally request cards.

At 13:38:26 the patron has a pair of sevens. This would allow him to split his hand. The dealer has a ten showing. The patron puts additional chips down next to the original chips. This might indicate that he was doubling down, meaning that he was doubling his original bet and would therefore only receive one additional card rather than two. Bunkowski believes that the patron was in fact splitting his hand since doubling usually occurs when the patron has a 10 or 11 face value. When the dealer dealt the card to the patron it was a five, giving the patron 19. In Bunkowski's view, had the dealer handed a ten to the patron he believes the dealer would have split the cards, which would have given the patron an opportunity for an additional chance at winning on the hand. The dealer is supposed to ask a patron whether he is splitting or doubling as the patron is not permitted to touch the cards and the dealer would have to split the hand if the patron was splitting.

Ms. Torres explained that had she believed that the patron was splitting the hand she would have split the hand before she handed out any additional cards. When she took the next card out of the shoe she looked at the card because she felt that the double down bet was "ridiculous." She agreed that she should not have hesitated, which gave the impression that she was looking at the card before deciding how to handle the bet. She denied that she had received any signal from the patron and believed that he was merely doubling down.

At 13:39:35 the tape indicates that the dealer changed. According to Bunkowski he was advised that Torres had gone on a break at this point. The dealer changes again at

13:58:12. The original tapes show that this new dealer was Ms. Torres returning to her position. At this point Mr. Torres is playing two hands. At 13:59:32 another incident occurs. Torres is at the third and fourth spots at the table.[2]

The incident at 13:58:12 has Mr. Torres playing a hand at seat three. He has a two card total of nine and attempts to double down by placing a bet of the same amount of chips that he already had on his original bet. At this point the dealer appears to look at the card coming out of the shoe, which turns out to be a two, and seems to push back the double down bet, thus allowing Torres to receive additional cards. In a double down bet only one card can be obtained by the player after doubling down. When Torres dealt the two to the patron this gave him an 11. She had an 18. He received two cards after the two, getting another two and a three. The dealer thus had a winning hand, but she only took the original chips back and not the double down which she had pushed back.

Ms. Torres testified that the player put the chips down and then appeared to change his mind, with his hand going over the money. If he did not change his mind she admits that her action was totally wrong. According to Torres, once the patron put his money down he was not permitted to take it away. The only way he could remove the bet was by telling her that he did not want it as a bet. She noted on the tape what she viewed as a hesitation. She believes that at that point she was talking to somebody, presumably her floorperson, to obtain permission to push back the bet. If she had such permission than her action was proper, if she did not, she agreed that it was totally wrong.

The next incident occurs beginning at approximately 14:04:25. Mr. Torres is playing two hands. The dealer has an ace showing. When this occurs players have the option of taking what is known as insurance. The patrons can bet half of the original bet (additional chips, not half of those originally bet) and they would get two to one back on the insurance bet. This means that if the dealer has black jack, whether the patron has a 20 or a 19 with the insurance bet he would get his original bet back. One puts this insurance bet on the insurance line which is just above the spots where the hands are dealt. Bunkowski described his observation of the patron making one insurance bet and what appears to be doubling down with respect to the other hand. He gets 21 on this hand.

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[2]Bunkowski observed the original tapes before the arrests were made and saw the face of the player. Torres' hand had a ring on it and he was able to identify Torres as the person playing these hands from observing the tape and the presence of the ring.

The dealer has black jack. Where the dealer has black jack and a person has doubled down the dealer gets the second bet back. According to Bunkowski's view of what occurs, instead of treating only one of the hands as covered by insurance, she treats both hands as so covered although only one insurance bet appeared to have been made.

Ms. Torres acknowledged that she had improperly handled these matters, but she does not know why she did so. She agreed that an insurance bet was made on the one hand. She acknowledged that she should have kept the bet on the upper hand, that is the third spot in the picture, for the casino.

At 14:07:37, with respect to the third hand, the patron has an 18, the dealer has a nine and a ten giving a 19, which would have been a winning hand for the house. Instead, the dealer pays the patron. Ms. Torres agreed that this occurred. At 14:10:02 the patron has an 18 the dealer shows an eight and then a ten for an 18. This is a tie which should have been a push bet, but instead resulted in the dealer paying the patron incorrectly. Ms. Torres did not dispute that she paid incorrectly.

At 14:09:56 the third spot has a seven and then gets a two and a five for a total of 14 and then an ace, for a total of 15. The dealer has a 17. Again, she pays the losing bet. Ms. Torres again agreed that she had incorrectly paid the bet.

Sometime after 14:13:00, with respect to the fourth spot, the patron has a two and then gets a five, for a total of seven, and then a ten for total of 17. The dealer has a four, then a six, another six and a two for an 18. Again this is a losing hand for the patron but the patron is paid by the dealer. Ms. Torres agreed that she did pay this losing hand. At 14:13:54 the patron has a three and then a ten on the third spot. He then makes a sign with his pinky which Bunkowski agrees appears to be signal for another card. He receives an ace. At this point Bunkowski argues that the next indication for a hit was supposed to indicate a card for the fourth spot. The seven which is dealt goes instead to the third hand.

Ms. Torres disagreed with Bunkowski's interpretation, saying that she began to deal the card toward the fourth spot, but realized that he wanted it for the third spot and dealt it there. Bunkowski believes, however, that when Torres saw that a seven was coming out instead of putting it on the fourth spot she put it on the third.

At 14:14:37 another incident occurs. This also involves an insurance bet. On the third hand the player gets a 21. The dealer takes the bets and puts them both in the middle rather than collect them. Ms. Torres does not dispute that this was wrong. At 14:15:34 another incident occurs. The player has 17 on the third hand and the dealer breaks, that is goes over 21. The player doubled down and she paid the player double the original bet, $20 rather than $10. Ms. Torres agrees that this did occur. She also agrees that she mispaid on a hand at 14:20:13 when the patron had a 19, the dealer had 20, and she paid him $20 on a losing hand. Again, as to the fourth hand, at 14:21:50 the patron had a three and a six and a ten, for 19, the dealer had a face card (ten) and then a seven. Instead of collecting the losing hand, the dealer leaves the bet on the table in the fourth spot.

According to the witnesses testimony, after the arrest of the two Torres' they each denied that they were involved in any collusion with each other. He had no idea whether Ms. Torres had received any money resulting from the supposedly collusive playing. Ms. Torres did acknowledge that she had made several mistakes.

A review of the tape conducted prior to the hearing indicated one other incident of a mispay with another patron other than Torres. In that situation she paid an unknown subject playing a hand in spot 3 who had a 16 and should not have won. Upon review of the additional surveillance tapes, conducted after the hearing, two other incidents of mispays to losing hands occurred. At 13:37:00 Torres paid a losing hand to an unknown subject in the second spot where she had a 17 and the player had a 16. At 13:58:00 she pushed an unknown player in the seventh spot who had a 19 and she had a 20.

In addition, further review of the tapes following the hearing showed four additional incidents which apparently involved Mr. Torres. At 13:30:00 the dealer failed to take a losing bet off the third spot. At the same time she gave an additional pay out to the player on the fourth spot on a double down wager so that he was paid three times instead of twice. At 13:37:00 the dealer did not take a loser on the fourth spot and went back to the rack and paid the player one red chip, causing a $15 overpayment. Finally, at 14:08:00 the dealer paid a push to the third spot when both the dealer and a player had 18's.

Ms. Torres testified that when she reported to work for her 12 noon to 8 p.m. shift on the day of her arrest, she did not feel well. She arrived at about 11:40 a.m. and advised scheduling that she wanted to go home. She was told that she could not because

they were shorthanded and they needed her. She went to the floor and dealt one hand and immediately felt like she was "blowing it." She told the whole table that she did not feel well. People caught her and told her that she was overpaying. Her floorperson also was aware of her not feeling well.

The witness testified that she had had an accident on November 24, 1985, in which ashes were blown in her eye, lacerating her eye and causing double vision. The dealing process requires a great deal of concentration and this was difficult with the injury to the eye. Ms. Torres explained that when looking at cards she could see numbers that were "not there," she was seeing more numbers than were actually present. She went to a doctor concerning her injury on November 25. Dr. Kenneth Berger, O.D., wrote a letter of March 30, 1988 confirming this visit and the injury to the eye, the complaint of double vision, and the prescription of lubrications. Thereafter, Ms. Torres attempted to return to work with an eye patch. This had been suggested by the casino physician. The shift manager was unsatisfied with her appearance on the floor and she was taken off the table and told not to come to work until the patch was taken off. She took several days off, but then "had to get back to work." She came back wearing dark sunglasses. As a result of continued problems with the eye and the ultimate determination that she had a cataract, Ms. Torres underwent a "cataract extraction of the right eye with lens implant on December 31, 1986," as verified by Theodore Buckner, M.D. (R-1 in evidence).

Ms. Torres testified that she had seen Mr. Torres in passing on the casino floor prior to the incident. She had never spoken to him. On the day of the incident she had told him that his hand movements were wrong and were causing her confusion.

With respect to the allegation that she had told the detective that she and Mr. Torres were related, she indicated that when the detective asked her if she and Melvin Torres were related, she indicated to him that "all Puerto Ricans are related in one way or another." Apparently, the detective interpreted this to mean that they were distant relatives. When the detective asked if she had seen Torres before she said that she "probably had in the course of the year."

Ms. Torres is 27 years old and is presently employed at Hanover Metro Insurance Company. She produced a character reference of March 28, 1988, indicating that she had proven to be a "exceptional employee" who has "demonstrated her commitment to Hanover not only has she proven her work product, but her professional mannerism to be

top quality. She is truly a person whom you can rely upon." She also produced a character reference from a special investigations unit manager at Hanover who indicated that she has been "quite helpful and that her integrity is without a doubt." Additional character reference was provided by a former co-worker, Zach Saunders, who appears to have been somewhat familiar with the incident because Ms. Torres allegedly called him during her break on December 7. He indicated that Torres "possesses a strong sense of right and wrong if she said she was sick and asked to go home then she was indeed very sick." Finally, the Appraisal Unit Regional Manager for Hanover Metro advised that Torres' "work ethics and personal demeanor are without a question a plus..."

Ms. Torres' has a ten year old child whom she supports. She is presently employed as a dispatcher for Hanover Metro but is being promoted to an adjusters position.

After her arrest, Ms. Torres was suspended and terminated two weeks later. She was on unemployment for six weeks and then went to Atlantic Community College for approximately six to eight months to obtain a secretarial certification. She worked at Hanover Metro Insurance during the day after school.

DISCUSSION

The Division contends that the incidence of improper dealing engaged in by Ms. Torres during her shift on December 7, 1985, were the result of conspiratorial activity conducted along with Melvin E. Torres. Ms. Torres counters that she and Torres were engaged in no such conspiracy, that she had no real relationship to him, either familial or otherwise, and that the admitted instances of improper performance on her part during that shift were the result of her not feeling well, a condition which she not only advised her supervisor and the players about but which apparently also resulted in her engaging in improper dealing in connection with several other hands dealt to patrons other than Mr. Torres.

During the hearing the Division presented evidence of 14 incidents. Ms. Torres agreed that she had committed errors in connection with ten of them. With respect to the other four, as noted in the description in the narrative above, she contested the conclusions drawn by Detective Bunkowski as to improprieties. After careful screening and rescreening of these incidents on slow motion, stop-action, frame-by-frame advance, this judge must admit that the observations of these four instances do not clearly indicate

whose version of what occurred is in fact an accurate representation of the incidents. While the video shows the hands of the players, especially Torres, and the cards dealt and chips bet, and while observers can note various movements on the part of Torres at different times, to say whether he in fact in any given situation was asking for a card, was waving off because he did not want a card, was signalling to have a card on a third as opposed to a fourth spot hand, etc., is extremely difficult to tell. Detective Bunkowski, who apparently has never worked as a dealer, but who obviously had some knowledge of what was supposed to occur in connection with the game, presented his version of what he thought Torres meant by his signals and how he thought Ms. Torres responded to Torres' activities, either properly or improperly, Ms. Torres presented her own explanation of what she believed had occurred, including references to possible off-camera contact with supervisors to get permission to do things which she did not have the right to do on her own. Of course, the tape has no sound and none of the supervisors were presented as witnesses for either side. Under the circumstances, I find it impossible to draw any clear conclusion one way or the other as to whether Bunkowski or Torres' opinions are correct as to what occurred in these four instances. As such, in order to make a judgment as to the responsibility or lack thereof of Ms. Torres in connection with this case, it is necessary to examine the entire picture, and the explanation which Ms. Torres gave for the admittantly large number of mistakes and try to determine whether it makes any sense that she would have had such a day apparently in connection with only one of her patrons, as opposed to any indication that, with the exception of a couple of instances, she had misdealt with other patrons.

Ms. Torres suggests that on the day of the incident she did not feel well, advised the appropriate personnel in an attempt to get relieved from work, was unable to do so, and then proceeded on her shift after warning her floor supervisor and patrons of her condition. She presented some evidence indicating eye problems both before and continuing after the incident and described a problem which the eye injury had caused which was giving her difficulty in reading the cards. Perhaps this might explain why she paid on some bets where she should have collected. It might even explain some difficulty in her perceiving accurately the rather rapid hand and finger movements of the patron. It is not inconceivable, although no testimony has been presented, that were the casinos to surveil the activities of employees who did not feel well they would find an increase in the number of wrong deals for the dealer. Of course, the problem with Ms. Torres' version is that in this case, based at least on what has been presented by the witnesses, including Ms. Torres, after a review of those portions of the tapes which they observed, there

appears to be a great preponderance of problems with the one patron.

Ms. Torres vehemently denied that she had ever told Detective Bunkowski that she was a cousin of Mr. Torres. She indicated that she made a sarcastic remark in response to his request as to whether they were related. However, Bunkowski was sure that she did say they were cousins. They did live in the same town and have the same last name. This coincidence in and of itself was not unusual and by itself is meaningless. When coupled with her alleged remark that they were cousins, it becomes somewhat more significant.

Based upon a review of the entire testimony and of the tape, and having given due weight to the credibility of the witnesses, especially in connection with Ms. Torres' presentation of the excuse for her admittedly bad day, I am not convinced that Ms. Torres' did ever tell Detective Bunkowski that Mr. Torres was her cousin. In fact, if the word "cousin" did come out, it may have been part of her sarcastic response to Bunkowski's question as to whether they were related. Given the fact that they had the same last name, it was certainly not surprising that Bunkowski requested information as to whether they were related. I find it quite believable that Ms. Torres, who undoubtedly was quite disturbed by having been pulled off the floor and arrested on a claim that she was cheating, would have sarcastically suggested to the officer a relationship which did not in fact exist. There is absolutely no independent evidence of a familial relationship and I do not find the evidence of Ms. Torres' supposed comments convincing as to its truth, although I do find that she may have used the word "cousin." Therefore, I **FIND** that the Division has failed to establish that they were actually related.

As to Ms. Torres' allegation of not feeling well, I found her testimony concerning this to be reasonably convincing. Clearly, her eye had been injured. She described the circumstances of having to come to work with sunglasses and the difficulty which she ultimately had in surgery. While she did not specifically say that the eye was the reason for her problems on December 7, when one couples the problems which she described in differentiating the cards with her testimony concerning her intestinal problems, it is not at all surprising that she was unwilling to work on that date.

Based upon a full consideration of the evidence, I **CONCLUDE** that although the state has presented evidence which clearly indicates Ms. Torres did not properly perform her duties as a dealer on December 7 it has failed to establish by a preponderance of the credible evidence that she was in fact engaging in a deliberate scheme with Mr. Torres to

enable him to win hands which he should not have won. While the result of her poor dealing was that he did receive payoffs on hands that he should have lost and did not have collected from him on certain hands as much as should have been collected, there is evidence that she also misdealt at least on a couple occasions with other patrons who it is not claimed she was involved in scheming with. As such, although one may certainly have some question about what occurred, I cannot find that the Division has met the necessary burden of proof which would establish that Ms. Torres acted deliberately, nefariously and conspiratorily such as to be subject to punishment for her actions or that she lacks the requisite good character, honesty and integrity or that her continued licensure would be inimical. As such, the complaint is dismissed.

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

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

DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

For the petitioner:

P-1 Video cassette tape of composite surveillance, December 7, 1985, composite of G.S. 54 and G.S. 40A blackjack 281, footage 0000-618

P-2 Atlantic City Municpal Court complaint, WJ67988

For the respondent:

R-1 Letter of March 15, 1988, from Theodore Buckner, M.D.

R-2 Letter of March 30, 1988, from Kenneth Berger, O.D.

R-3 Notorized statement of April 8, 1988, from Dale J. Sizemore

R-4 Notorized statement of April 5, 1988, from Zachary Saunders

R-5 Notorized statement of April 1, 1988, from John C. Humphreys

R-6 Notorized statement of April 5, 1988, from Michael Astalos

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-18
OAL DOCKET NO. CCC 08220-87
LICENSE NO. 40072-21
ORDER NO. 88-39-7

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

Complaint, :

ORDER

v. :

JUDY ANN TORRES, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission; and exceptions to the initial decision and a reply thereto having been filed; and the Commission having considered the entire record of the proceedings at its public meetings of September 22, and October 5, 1988,

IT IS on this 31st day of October 1988, ORDERED that the complaint is remanded to the Office of Administrative Law for further proceedings at which the following issues, without limitation, are to be addressed:

(1) The Commission's review of the composite videotape of the underlying events revealed two additional incidents of possible misdealing or improper

handling of wagers which were not addressed by the parties at the hearing nor cited by the Division in its report of June 14, 1988, nor discussed by the Administrative Law Judge in the initial decision. These incidents, which are found at 14:14:06 and 14:17:11 of the videotape, may have a bearing on the decision in this case, as may the respondent's explanation concerning them. Fairness requires that the issues raised by the complaint or addressed in the initial decision be reconsidered in light of these incidents and whatever explanation may be forthcoming from the respondent; and

(2) With regard to the question of whether the respondent has committed cheating and swindling, it is uncertain from the Commission's review of the initial decision whether the ALJ believed that the Division of Gaming Enforcement was required to prove a conspiracy or the existence of some nefarious arrangement between the respondent and the patron identified as Melvin E. Torres in order to establish a violation of N.J.S.A. 5:12-113. There is no such requirement; and

(3) The Division of Gaming Enforcement should acquire and introduce such further information as may be available regarding the patron identified in this record as Melvin E. Torres, so that the record is sufficiently complete to make an informed decision.

IT IS FURTHER ORDERED that the initial decision is modified to correct or clarify the following:

(a) The episode at 14:10:02 is described in the initial decision erroneously. Init. dec. at 7, ¶2. The patron had a total of 18 and the dealer a ten and then a face card (10) (not an 8 and 10 as stated in the initial decision). Contrary to the

description in the initial decision, the dealer took the player's chip, she did not pay him. Thus, the dealer played the hand correctly.

(b) The episode at 14:21:50 is described in the initial decision erroneously. Init. dec. at 8, ¶1. The patron had a 3 and a 3 and a 10 for 16 (not a 3 and a 6 and a 10 for 19) and the dealer had a face card (10) and then a 7. It was, as the ALJ observed, an error for the dealer not to have collected the patron's losing hand.

(c) Concerning the event which occurred at 14:04:25, the ALJ stated, "Where the dealer has blackjack and the person has doubled down the dealer gets the second bet back." Init. dec. at 7. It is the player who gets the second bet back, not the dealer.

(d) The narrative provided by the ALJ for the play which occurred at 14:15:34 requires clarification to comprehend the nature of the dealer's error. The patron, Torres, played the third and fourth spots. He doubled down only on the fourth spot. However, the dealer whose hand exceeded "21," paid double the original bet on both hands.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-214-A
AND 87-425
OAL DOCKET NOS. CCC 825-87 AND
CCC 5301-87
ORDER NO. 89-21-11

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

Complainant,

v.

ORDER

TRUMP'S CASTLE ASSOCIATES
LIMITED PARTNERSHIP d/b/a
TRUMP's CASTLE HOTEL AND CASINO,
et al.,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of April 12, 1989, and May 24, 1989,

IT IS on this 5th day of June 1989, ORDERED that the portion of the initial decision finding violations of N.J.A.C. 19:45-1.9(b)(3) is rejected for the reasons stated on the record at the Commission's public meeting of May 24, 1989; and

IT IS FURTHER ORDERED that the portion of the initial decision granting a motion to dismiss charges under N.J.A.C.

19:45-1.2(c)(3) is rejected for the reasons stated on the record, and the charges are hereby reinstated and violations are found in a number to be determined by the administrative law judge on remand; and

IT IS FURTHER ORDERED that, with respect to other findings by the administrative law judge, the initial decision is affirmed; and

IT IS FURTHER ORDERED that, for the reasons stated on the record, the matter is remanded to the OAL for consideration of whether any violations occurred herein regarding N.J.S.A. 5:12-100(e) and -99.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 825-87 & CCC 5301-87

AGENCY DKT. NOS. 87-214 & 87-425

(CONSOLIDATED)

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

Petitioner,

v.

TRUMP'S CASTLE ASSOCIATES LIMITED
PARTNERSHIP, d/b/a TRUMP'S CASTLE
HOTEL AND CASINO; WILLARD "BUCKY"
HOWARD, VICE PRESIDENT FOR CASINO
OPERATIONS; ROBERT FIORE, VICE PRESIDENT
AND TREASURER; LAWRENCE McGUIRE, CASINO
SHIFT MANAGER; GREGORY MOORE, CASINO
CAGE SHIFT SUPERVISOR; JAMES THORSBY,
CASINO CAGE SHIFT SUPERVISOR;
JACQUELINE MASON, CASINO CAGE
ASSISTANT SHIFT SUPERVISOR; AND JOHN
BELL, ASSISTANT CASINO SHIFT MANAGER,

Respondents.

Joseph M. Nardi III, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Robert M. Pickus, Esq., General Counsel, Trump's Castle Hotel & Casino, and **Brian D. Spector**, Esq. (Ribis, Graham, Verdon & Curtin, attorneys) for respondents Trump's Castle, Robert Fiore, Lawrence McGuire, Gregory Moore, James Thorsby, Jacqueline Mason, and John Bell

Guy S. Michael, Esq., for respondent Willard "Bucky" Howard (Brown & Michael, attorneys)

Record Closed: February 1, 1989 Decided: February 9, 1989

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BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of two complaints filed by petitioner with the Casino Control Commission (Commission) alleging violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Respondents requested a hearing and the matters were transmitted to the Office of Administrative Law as contested cases pursuant to N.J.S.A. 52:14F-1 et seq., and consolidated by agreement of the parties. Respondents filed a Motion for Partial Summary Decision which was granted in part and denied in part. Specifically, the charges that respondents violated N.J.A.C. 19:45-1.2(c)3 were dismissed.[1] The Order in connection with this motion is attached and incorporated by reference.

The parties have stipulated to the issues, facts, and exhibits. The facts are set forth in 74 numbered paragraphs which are attached and incorporated by reference. The record closed initially on October 13, 1988, with receipt of the last post-hearing memorandum. A 45-day extension of the time of decision was granted, and during this period respondents filed a motion to re-open argument as a result of Commission decisions rendered after the record closed. The motion was granted for the limited purpose of receiving these decisions and additional argument. The record closed again on February 1, 1989.

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[1] Petitioner sought reconsideration of this Order after submission of the stipulated record. It now believes that Castle had an internal procedure requiring a patron to support requests for airfare complimentaries with tickets or other proof, and that this tends to show that such a requirement did exist. I do not agree. First, respondents were not charged with violating an internal control procedure with respect to supporting and subsidiary documentation, and the policy to which petitioner points is found in a memo from Ivana Trump to respondents Howard and Fiore dated April 28, 1987, after these incidents took place. Moreover, the policy appears to have been an accommodation to petitioner's overly expansive interpretation of the regulation. It would be inappropriate to use that spirit of cooperation as the basis for a violation.

The case arises out of transactions conducted by respondents with a patron named Antonio Chan. The issues presented are as follows:

A. Did respondent Castle's failure to collect vigorish from patron Antonio Chan in the amount of $2,250 prior to patron Chan's departure from Castle's baccarat pit, the subsequent reshuffling of the cards and the resumption of play by the remaining baccarat players on or about May 10, 1986, violate N.J.S.A. 5:12-99a(16), N.J.S.A. 5:12-100a, N.J.A.C. 19:47-3.3(b) and Castle's approved internal control procedures regarding the conduct of the game of baccarat?

B. Did respondent Castle's conduct in connection with the redemption transactions of patron Antonio Chan on December 14, 1985, May 11, 1986, June 3, 1986, and April 13, 1987, violate N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1?

C. Did respondent Castle's conduct in connection with the redemption transactions of patron Antonio Chan on December 14, 1985, May 11, 1986, June 3, 1986, and April 13, 1987, violate N.J.S.A. 5:12-101a(2) and c and N.J.A.C. 19:45-1.25(a)2?

D. Did the conduct of the following named respondents in connection with the redemption transactions of patron Antonio Chan on the following dates violate N.J.S.A. 5:12-101a(1) and N.J.A.C. 19:45-1.25(a)1:

   a. James Thorsby - December 14, 1985
   b. Gregory Moore - May 11, 1986
   c. Jacqueline Mason - June 3, 1986
   d. Willard Howard and James Thorsby - April 13, 1987

E. Did the conduct of the following named respondents in connection with the redemption transactions of patron Antonio Chan on the following dates violate N.J.S.A. 5:12-101a(2) and c and N.J.A.C. 19:45-1.25(a)2:

   a. James Thorsby - December 14, 1985
   b. Gregory Moore - May 11, 1986
   c. Jacqueline Mason - June 3, 1986
   d. Willard Howard and James Thorsby - April 13, 1987

F. If it is determined that patron Antonio Chan was provided complimentaries in the form of travel reimbursements, did respondent Castle record said travel complimentaries on September 28, 1985, December 14, 1985, February 2, 1986, May 11, 1986, June 3, 1986, and April 13, 1987, at

amounts based upon the actual cost to the licensee of having a third party provide such services, as required by N.J.A.C. 19:45-1.9(b)3?

G. If it is determined that patron Antonio Chan was provided travel complimentaries, did the following named respondents record said complimentaries on the following dates at amounts based upon the actual cost to the licensee of having a third party provide such services, as required by N.J.A.C. 19:45-1.9(b)3:

a. Lawrence McGuire and James Thorsby - September 28, 1985
b. Willard Howard, Lawrence McGuire and James Thorsby - December 14, 1985
c. Lawrence McGuire and James Thorsby - February 2, 1986
d. Robert Fiore, Willard Howard and Gregory Moore - May 11, 1986
e. Willard Howard, Lawrence McGuire and Jacqueline Mason - June 3, 1986
f. Willard Howard and James Thorsby - April 13, 1987

H. If it is determined that patron Antonio Chan was not provided travel complimentaries, did respondent Castle maintain complete, accurate and legible records pertaining to the costs in connection with the transactions involving patron Chan on September 28, 1985, December 14, 1985, February 2, 1986, May 11, 1986, June 3, 1986, and April 13, 1987, as required by N.J.A.C. 19:45-1.2(a)?

I. If it is determined that patron Antonio Chan was not provided travel complimentaries, did the following named respondents maintain complete, accurate and legible records pertaining to the costs in connection with the transactions involving patron Chan on the following dates, as required by N.J.A.C. 19:45-1.2(a):

a. Lawrence McGuire and James Thorsby - September 28, 1985
b. Willard Howard, Lawrence McGuire and James Thorsby - December 14, 1985
c. Lawrence McGuire and James Thorsby - February 2, 1986
d. Robert Fiore, Willard Howard and Gregory Moore - May 11, 1986
e. Willard Howard, Lawrence McGuire and Jacqueline Mason - June 3, 1986
f. Willard Howard and James Thorsby - April 13, 1987

J. Did respondents Castle and Gregory Moore examine, and document the examination of, patron Chan's identification

credentials prior to acceptance of Boardwalk Regency Corporation check no. 8363 on May 11, 1986, as required by N.J.A.C. 19:45-1.25(e)?

K. Did respondents Castle and Gregory Moore determine the validity of Boardwalk Regency Corporation check no. 8363 prior to acceptance from patron Antonio Chan and verify that the check represented either the return of patron Chan's deposit money or the redemption of the Boardwalk Regency Corporation's gaming chips, on May 11, 1986, as required by N.J.A.C. 19:45-1.25(f)?

L. Did respondents Castle's and Gregory Moore's acceptance of Boardwalk Regency Corporation check no. 8363 in the redemption transaction of patron Antonio Chan on May 11, 1986, violate N.J.A.C. 19:45-1.26(a)?

M. If it is determined that patron Antonio Chan was provided complimentaries in the form of travel reimbursements, did respondents John Bell, Lawrence McGuire and Robert Fiore's conduct during the transactions involving patron Antonio Chan on April 13, 1987, result in Castle's failure to record the complimentaries at amounts based upon the actual cost to the licensee of having a third party provide such services, as required by N.J.A.C. 19:45-1.9(b)3?

N. Did respondents Castle and Willard Howard agree to provide patron Chan with a payment based on a percentage or share of money or property gambled at a casino or derived from casino gaming activity, in violation of N.J.S.A. 5:12-104a(1)?

O. Did respondents Castle's and James Thorsby's acceptance of GNOC Corp. checks numbered 6167, 6168 and 6169 in the redemption transactions of patron Antonio Chan on April 13, 1987, violate N.J.A.C. 19:45-1.26(a)?

P. Whether, and to what extent, the providing of cash complimentaries to casino patrons is permissible under the Casino Control Act and regulations promulgated thereunder.

Q. Whether, to the extent it is determined that the complimentaries provided to patron Antonio Chan on the dates in question and designated as travel reimbursement was not properly documented as such, may they instead be considered permissible cash complimentaries.

R. Whether the State is barred, based on the equitable principles of waiver and/or estoppel and/or laches from seeking sanctions from respondents for their conduct in issuing complimentaries to patron Antonio Chan based

> upon the state's receipt of the quarterly reports prepared pursuant to N.J.S.A. 5:12-102m and N.J.A.C. 19:45-1.9(c) since the opening of Trump's Castle in June 1985 through the present.

A. Whether respondent Castle violated N.J.S.A. 5:12-99a(16), N.J.S.A. 5:12-100a, N.J.A.C. 19:47-3.3(b) and approved internal control procedures on May 10, 1986 (Issue A)

On May 10, 1986, patron Chan played baccarat at Castle and sustained gambling losses of $300,000. During his baccarat play, patron Chan incurred vigorish in the amount of $2,250. Vigorish is a charge collected from a gaming patron based on the amount won on a wager made on a "banker's hand," N.J.A.C. 19:47-3.3. Following his baccarat play on May 10, 1986, patron Chan left the baccarat pit without paying his vigorish. After he left the baccarat pit, new decks of cards were shuffled and play resumed.

Castle personnel prepared a note at the baccarat pit which stated that patron Chan was not permitted to resume play until the vigorish was paid. On the following day, $2,250 was deposited into the drop box for the purpose of paying the outstanding vigorish obligation.

N.J.S.A. 5:12-100a authorizes the Commission to adopt regulations with respect to casino games, and N.J.A.C. 19:47-3.3 then provides, with respect to vigorish and baccarat play:

> (b) . . . all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe and in no event shall the collection of any vigorish be deferred beyond such point.

N.J.S.A. 5:12-99a(16) sets forth requirements for the submission of internal control procedures for the conduct of games. Respondent Castle's submission with respect to the collection of vigorish in baccarat play states that "all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe and in no event shall the collection of any vigorish be deferred beyond such point."

Petitioner argues that a plain reading of N.J.A.C. 19:47-3.3(b), as well as of Castle's internal control submissions, makes it a violation to defer collection of vigorish

until the following day. Petitioner points also to a warning letter sent to Castle in September 1985 concerning improper vigorish forgiveness and to a series of responsive memoranda by Castle to its staff reminding them to meticulously follow the regulation and internal control procedures. Castle believes that the situation presented a practical problem which it sought to resolve in a practical way. Counsel states that Chan simply had no available funds from which the vigorish could be paid on May 10, 1986, prior to the reshuffling of the cards. Thus, it did the next best thing by retaining a note at the baccarat pit reflecting the obligation, which note was paid the following day. Castle argues that petitioner's reading would impose upon it an obligation to monitor patron funds in order to prevent them from incurring vigorish during a game beyond their then ability to pay.

The regulatory scheme here does not attempt to dictate when during the course of play vigorish must be paid other than to say that it must be collected before reshuffling the cards in a shoe. The record does not indicate whether or not patron Chan had money to pay his vigorish on the day in question or whether he was asked for it. Moreover, the making of a note in lieu of collection does not on the face of it satisfy the regulation. In a system in which various cash equivalents and notes are acceptable under specified—and tightly controlled—conditions, a plain requirement for collection must mean just that. That Castle maintained a paper trail of the debt tends to show that there was no attempt to evade the missed collection, and this is a factor in mitigation.

B. Whether respondents violated N.J.S.A. 5:12-101a and c and N.J.A.C. 19:45-1.25(a) on December 14, 1985, May 11, 1986, June 3, 1986, and April 13, 1987 (Issues B - E)

The charges here allege violations of the regulatory scheme with respect to credit. Castle and four individual respondents—James Thorsby (December 14, 1985, and April 13, 1987), Gregory Moore (May 11, 1986), Jacqueline Mason (June 3, 1986), and Willard Howard (April 13, 1987)—were involved.

On the above dates, each individual respondent either prepared or authorized documentation indicating that patron Chan was being reimbursed for travel expenses. On December 14, 1985, respondents recorded a travel complimentary in the amount of $16,800 for patron Chan. The transaction occurred at approximately 12:12 a.m. At or

about the same time, Chan redeemed two counter checks in the total amount of $200,000. The patron redeemed the counter checks with $16,800 in cash and a personal check in the amount of $183,200. The payment of $16,800 amounts to 8.4 percent of the patron's gambling losses on December 13, 1985.

On May 11, 1986, respondents recorded a travel complimentary in the amount of $25,200 for patron Chan. The transaction occurred at approximately 2:09 p.m. At or about the same time, the patron redeemed three counter checks in the total amount of $300,000. He redeemed the counter checks with $22,950 in cash, a Boardwalk Regency Corporation (BRC) check payable to Antonio Chan in the amount of $235,000 and a personal check in the amount of $42,060. According to respondent Moore, the $22,950 that was used in the redemption transaction was a portion of the $25,200 that was recorded as a travel complimentary on May 11, 1986. The travel complimentary of $25,200 represented 8.4 percent of Chan's $300,000 gambling loss on May 10, 1986.

On June 3, 1986, respondents recorded a travel complimentary in the amount of $10,500 for patron Chan. The transaction occurred at or about 9:31 p.m. At about the same time, Chan redeemed two counter checks in the total amount of $130,000. These had been issued to him on May 14, 1986, when he lost $130,000 while playing baccarat. Patron Chan redeemed the counter checks with $10,500 in cash, a personal check in the amount of $19,500 and casino checks in the amount of $100,000. According to respondent Mason, the $10,500 that was used in the redemption transaction was the same cash that was recorded as a travel complimentary. The payment of $10,500 represents 8.1 percent of Chan's gambling loss.

On April 13, 1987, respondents recorded three travel complimentaries for Chan in a total amount of $24,943. Two of these are at issue here, in the amounts of $17,907 and $3,165 totalling $21,072. At or about the same time that the two complimentaries were recorded, the patron redeemed three counter checks in the total amount of $300,000. He redeemed the counter checks with $8,000 in cash and $292,000 in casino checks. The $8,000 in cash used in the redemptions was a portion of the $24,943 that was recorded as travel complimentaries. On April 11, 1987, patron Chan had lost $300,000 while playing baccarat at Castle. On April 12, 1987, prior to his arrival, Castle cage personnel were instructed that Chan was authorized to receive as much as $25,200 in

travel complimentaries if he had tickets. This would represent an 8.4 percent reimbursement of his losses.

Petitioner argues that the payments to patron Chan recorded as travel complimentaries on these four dates were not reimbursements for actual travel expenses, but rather were rebates of from 8.1 to 8.4 percent to a favored patron to soften the effects of his losses and induce his return to the casino. In two of the redemption transactions, the cash provided by Castle as travel reimbursement was used. In two instances, the amount recorded in the paid out transaction was the same as that used in the redemption transaction. The paid out and redemption transactions all occurred within minutes of each other on each date. Petitioner argues further that its position is supported by the fact that on the other two occasions when respondents recorded travel complimentaries to the patron, specifically September 28, 1985, and February 2, 1986, the complimentaries recorded in the patron's name also amounted to 8.4 percent of his previously incurred gambling losses. On September 28, 1985, the patron lost $50,000 and received a complimentary in the amount of $4,200 and on February 1, 1986, the patron lost $150,000 and received a travel complimentary the following day in the amount of $12,600.

The stipulated facts also reveal that casino shift manager John Loper gave sworn testimony in which he stated that when he reported to work on May 11, 1986, he was informed that patron Chan would be in that day and would be reimbursed a certain amount, "basically . . . eight percent of what he lost." Mr. Loper testified that this percentage of reimbursement for patron Chan was "standard procedure."

N.J.S.A. 5:12-101 provides:

> 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.
>
> . . .
>
> c. . . . 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 . . .

N.J.A.C. 19:45-1.25(a)2 provides that a casino licensee shall not:

> Release or discharge any debt which is uncollectable either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 19:45-1.29.

Petitioner argues that sub-paragraphs a(1) and (2) and paragraph c were violated by respondents' actions. By giving Chan a portion of the funds to pay off his casino debts, respondents enabled him to gamble with credit in a manner inconsistent with the regulations. By returning far more than airfare, it had in effect released a portion of his debt without attempting to make collection. By permitting Chan to redeem counter checks with monies obtained as travel reimbursements, respondents facilitated an exchange for less than full value.

We need not develop these arguments more fully, for during the course of these proceedings the Commission has rendered two decisions interpreting section 101 as it applies here. On review of an OAL decision in Division of Gaming Enforcement v. Boardwalk Regency Corp. (BRC), OAL DKTS. CCC 2480-87 & CCC 8472-87 (Sept. 12, 1988), modified, Casino Control Commission (Jan. 11, 1989), a case involving patron incentive agreements which operated to rebate a percentage of losses or play, the Commission held that section 101a did not apply. Sub-paragraph a(1) was interpreted to extend only to transactions which created an obligation to repay. Since the BRC program was a rebate, which extinguished rather than created debt, it was not contemplated by the section. Petitioner's broad reading, to the effect that this rebate infused the entire credit transaction and induced gaming activity with an unauthorized and improper incentive, was rejected. The Commission also ruled that sub-paragraph a(2) had been limited by N.J.A.C.

19:45-1.25(a)2 to circumstances where the debt release involved uncollected checks. Our facts do not involve uncollected checks. With respect to N.J.S.A. 5:12-101c the Commission ruled that the BRC incentive program in establishing a prior agreement to discount a patron's counter checks with incentive checks permitted a patron to redeem his debt at less than face value, and thus violated the section. Though it found a violation in the BRC case, the Commission distinguished this ruling in Division of Gaming Enforcement v. GNOC Corp., OAL DKT. NO. CCC 2771-87, (October 3, 1988), modified Casino Control Commission (Jan. 11, 1989), which had a fact pattern close to our own, involving cash payments to patron Chan. No specific agreement to discount counter checks existed, and the Commission found no violation of section 101c. Thus, although the paid out and redemption transactions in our own case occurred within moments of each other and in some instances with the same money, that does not establish an agreement to discount counter checks. Whatever the expectations of the parties, Castle was not obliged to grant these complimentaries and the patron was not required to use the money to redeem his counter checks.

The Commission has been granted broad oversight with respect to this industry, and, particularly where it rules in an esoteric area of financial regulation, its understanding of the law is entitled to deference. Although petitioner has established the facts which it set out to prove, the Commission's reading of section 101 leaves it without a violation.

C. Whether respondents violated N.J.A.C. 19:45-1.9(b)3 by not recording the complimentaries in amounts based upon the actual cost of the licensee of having a third party provide such services (Issues F - I, M, P & Q)

This series of issues involves the documentation maintained by respondents in connection with the travel complimentaries to patron Chan. Seven violations are alleged on six dates. Castle is charged in each, and the individual respondents are charged with playing a part by authorizing, preparing, reviewing or instructing others in the preparation of one or more of the travel complimentaries. Specifically, with respect to the September 28, 1985 complimentary, respondent McGuire authorized it and it was prepared by respondent Thorsby. The December 14, 1985 complimentary was authorized by Howard and McGuire and prepared by Thorsby. The February 2, 1986 complimentary was authorized by McGuire and prepared by Thorsby. The May 11, 1986 complimentary was

authorized by Fiore and Howard and prepared by Moore. The June 3, 1986 complimentary was authorized by Howard and McGuire and prepared by Mason. The April 13, 1987 complimentaries were authorized by Howard and prepared by Thorsby. Respondent Bell reviewed the payout at the time the transactions were being conducted, and respondents Fiore and McGuire where contacted regarding the transactions.

N.J.A.C. 19:45-1.9(b)3 provides that all complimentary services or items shall be recorded as follows:

> A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by a third party not affiliated with the licensee shall be recorded at an amount based upon the actual cost to the licensee of having the third party provide such service or item;

Petitioner takes the position that in failing to record the actual cost of the complimentary service in each of the instances described, Castle and the individual respondents—to the extent that they were involved—violated this regulation. Respondents argue that there is no evidence that the amounts listed in the travel complimentaries were not the cost of travel and thus that petitioner has not met its most basic factual burden. They argue also that the regulation is vague in that it fails to specify what is meant by cost—the cost to the licensee, the third party, or the patron. Finally, they say that Castle did report its actual cost when it listed the amount paid to Chan. These defenses are not meritorious.

On the face of it, the amounts paid to the patron under the label of travel complimentaries seem excessive for the cost of travel. There are estimates in the record which suggest that round trip airfare from the Philippines where Chan resides, would be about $4,000. In any event, as respondents made no effort to determine the cost of travel, any equivalence here would be serendipitous. Moreover, from the prior discussion it appears that these complimentaries were geared toward play or losses, not to the cost of airfare. Respondents' theory that, in reporting the amount paid Chan they provided its actual cost, forgets that accuracy is linked to some reasonably close approximation of airfare. By unhinging themselves from this requirement, respondents might justify any sum paid, so long as the amount was reported. Thus, the record supports a finding that these outlays were not recording airfare alone; in the main they were larger inducements to a favored player to return.

Petitioner notes that if these outlays were not airfare, but rather were cash complimentaries, as respondents have argued at various times during these proceedings, then they were improperly reported as airfare, and alternatively violate N.J.A.C. 19:45-1.2(a). This section requires licensees to maintain ". . . complete, accurate, and legible records . . ." I do not pursue this question, because I see no need to reformulate what was done here. Respondents reported these payments as airfare complimentaries, and cannot call them cash complimentaries, because of their sense that this mechanism did not at the time violate the Act, a conclusion recently indicated in DGE v. BRC; DGE v. GNOC Corp.

Respondents also appear to argue, with respect to the April 13, 1987 transaction in which the patron submitted numerous airline tickets clearly unrelated to that trip, that there is nothing which requires an airfare complimentary to relate in time and place to a particular trip. This view is greatly at variance with a requirement for accurate reporting.

D. Whether respondents Castle and Moore violated N.J.A.C. 19:45-1.25(e) and (f) by failing to properly document the acceptance of Boardwalk Regency Corporation check no. 8363 on May 11, 1986 (Issues J and K)

On May 11, 1986, respondent Moore received from patron Chan BRC check no. 8363, payable to "Antonio Chan" in the amount of $235,000. The check was used to redeem the patron's outstanding counter checks. Respondent Moore did not examine and/or document the identification credentials of patron Chan, nor did he verify the check.

Respondents admit to these two infractions, but argue in mitigation that Chan was well known to Castle personnel and that the failure to document his credentials—and to verify the BRC check before accepting it—was unintentional and of a minor nature.

E. Whether respondents Castle, Moore and Thorsby violated N.J.A.C. 19:45-1.26(a) by accepting casino checks in the redemption transactions on May 11, 1986, and April 13, 1987 (Issue L and O)

On May 11, 1986, respondents Castle and Moore accepted a BRC check from patron Chan to be used in the redemption of his outstanding counter checks. On April 13, 1987, respondents Castle and Thorsby accepted three GNOC Corp. checks to be used in the redemption of Chan's outstanding counter checks.

N.J.A.C. 19:45-1.26(a) provides:

> The drawer of a Counter Check may redeem it by exchanging cash, cash equivalents, gaming chips, plaques, or any combination of another check, cash, cash equivalents, gaming chips or plaques.

The term "cash equivalents" is defined in N.J.A.C. 19:45-1.1 as:

> 1. Certified checks, cashiers checks, treasurers checks, recognized travelers checks or recognized money orders, any of which are made payable to the casino licensee, "bearer" or "cash";
>
> 2. Certified checks, cashiers checks, treasurers checks or recognized money orders, any of which are made payable to the presenting patron and endorsed in blank . . .
>
> 3. Recognized credit cards . . .

The checks accepted by respondents on May 11, 1986, and April 13, 1987, were casino checks which are also defined in N.J.A.C. 19:45-1.1 as follows:

> "Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips . . . or in return, either in whole or in part, of a person's deposit on account with the casino licensee . . .

Petitioner takes the view that a casino check cannot be used to redeem a patron's counter checks because N.J.A.C. 19:45-1.26(a) does not specifically authorize it. I do not agree. Petitioner does not explain what evil is avoided by its reading of this regulation. The obligation to investigate the terms of a casino check presented, N.J.A.C. 19:45-1.25(e) and (f), is intended to uncover its source of support and any infirmities. Beyond that, there seems to be no reason why the regulatory use of the term "or any combination of another check . . ." in the second clause of the sentence should exclude casino checks. Moreover, as respondents point out, casino checks may be exchanged by a licensee for

cash or cash equivalents, N.J.S.A. 5:12-101(g); N.J.A.C. 19:45-1.25(e). By adding this intermediate step, a patron could exchange his casino check for cash and use that money to redeem counter checks. Nothing is served by this.

F. Whether respondents Castle and Howard violated N.J.S.A. 5:12-104a(1) (Issue N)

Petitioner has charged respondents Castle and Howard with violations of N.J.S.A. 5:12-104a(1), which provides:

> Unless otherwise provided in this subsection, no agreement which provides for the payment, however defined, of any direct or indirect interest, percentage or share of any money or property gambled at a casino or derived from casino gaming activity or of any such interest, percentage, or share of any revenues, profits or earnings of a casino shall be lawful.

Petitioner argues that the reimbursements listed as travel complimentaries, falling as they do from 8.1 to 8.4 percent of patron Chan's gambling losses on the dates in question, establishes an agreement between the parties to share money gambled. Respondents maintain that the section does not apply to the licensee/patron relationship. I agree. This section, entitled "casino licensee - leases and contracts," is directed at the licensee's commercial relationships, prohibiting contracts based on percentages of money gambled. There is no indication that the section has application to the licensee patron relationship. See, DGE v. BRC; DGE v. GNOC Corp.

G. Whether petitioner is barred by equitable principles from bringing the instant action (Issue R)

Respondents assert that the equitable defenses of waiver, estoppel and laches apply here. These defenses are based on petitioner's receipt of quarterly reports from Castle, pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9(c) covering the matters charged here. Respondents' contentions are not entirely clear. There has been no delay in bringing this case to light nor has there been any prejudice to respondents based on the way in which the matter has gone forward. See, Christian Science Board of Directors v. Evans, 191 N.J. Super. 411 (Ch. Div. 1983), affirmed in part, reversed in part, 199 N.J. Super. 160 (1985). These arguments are not meritorious.

H. Penalty

N.J.S.A. 5:12-130 provides certain guidance in assessing penalties. It provides:

> In considering appropriate sanctions in a particular case, the Commission shall consider:
>
> a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
>
> b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
>
> c. Any justification or excuse for such conduct by the licensee or registrant;
>
> d. The prior history of the particular license or registrant involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant . . . .

Respondent Castle violated N.J.A.C. 19:47-3.3, N.J.S.A. 5:12-99a(16), N.J.S.A. 5:12-100a and approved internal control procedures. There was no effort to hide this debt, and it was collected the following day. An aggravating fact is that Castle had some prior warning about the collection of vigorish, although this problem was unconnected to the type of incident involved here. I impose a penalty of $5,000. Castle also violated N.J.A.C. 19:45-1.25(e) and (f). This was a technical infraction of a minor nature. I impose a penalty $2,500 for each offense. With respect to respondent Moore's violation of N.J.A.C. 19:45-1.25(e) and (f), I impose a penalty of $500 for each offense.

The more substantive violations involve N.J.A.C. 19:45-1.9(b)3. Each of the individual respondents is a casino key employee, N.J.S.A. 5:12-89; Howard and Fiore are vice presidents. The charges sustained surrounding N.J.A.C. 19:45-1.9(b)3 exhibit an open

disregard for reporting accuracy where this high roller was concerned such that the offenses are not meaningfully different from false reporting. This type of conduct can undermine petitioner's ability to monitor complimentaries, but beyond this it creates a climate in which the regulatory process is taken lightly. For this reason the offenses are of some seriousness. There is no prior history of this type of offense in the record, which tempers matters. Although their acts were no worse than those of the other individual respondents, Howard and Fiore as vice presidents carry a greater burden here.

I order the following penalties:

1. Castle - September 28, 1985, December 14, 1985, February 2, 1986, May 11, 1986, June 3, 1986, April 13, 1987 (two transactions) - $10,000 per transaction.

2. Willard Howard - December 14, 1985, May 11, 1986, June 3, 1986, and April 13, 1987 (two transactions) - $7,000 per transaction.

3. Robert Fiore - May 11, 1986, and April 13, 1987 (2 transactions) - $7,000 per transaction.

4. Lawrence McGuire - September 28, 1985, December 14, 1985, February 2, 1986, June 3, 1986, and April 13, 1987 (2 transactions) - $4,000 per transaction.

5. James Thorsby - September 28, 1985, December 14, 1985, February 2, 1986 and April 13, 1987 (2 transactions) - $4,000 per transaction.

6. Gregory Moore - May 11, 1986 - $4,000.

7. Jacqueline Mason - June 3, 1986 - $4,000.

8. John Bell - April 13, 1987 (2 transactions) - $4,000 per transaction.

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

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

2/9/89
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 15 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

None

EXHIBIT LIST

J-1	Antonio Chan's Application for Casino Credit at Castle
J-2	Castle Paid Out Voucher #726760
J-3	Castle Paid Out Voucher #746810
J-4	Castle Redemption Voucher #746807
J-5	Castle Paid Out Voucher #759244
J-6	Castle Paid Out Voucher #784572
J-7	Castle Redemption Voucher #784603
J-8	Castle Redemption Voucher #784575
J-9	Castle Redemption Voucher #784585
J-10	Casino Control Commission Notice of Violation #5-2, dated May 16, 1986
J-11	Casino Control Commission Notice of Violation #5-3, dated May 16, 1986
J-12	Castle Casino Check Log, dated May 1986
J-13	Castle Paid Out Voucher #790935
J-14	Castle Redemption Voucher #790938
J-15	Castle Paid Out Voucher #882141
J-16	British Airways ticket, dated April 11, 1987
J-17	Philippine Airlines ticket, dated November 10, 1986
J-18	TWA ticket, dated November 19, 1977
J-19	Pan Am ticket, dated March 2, 1984
J-20	Pan Am ticket, dated February 12, 1985
J-21	Avianca ticket, dated July 9, 1975
J-22	Pan Am ticket, dated May 19, 1986
J-23	Castle Paid Out Voucher #882152
J-24	British Airways ticket, dated April 9, 1987
J-25	Singapore Airlines ticket, dated April 7, 1987
J-26	Castle Redemption Voucher #882149
J-27	Castle Redemption Voucher #882151
J-28	Castle Paid Out Voucher #882171

J-29 United Airlines ticket, dated April 13, 1987

J-30 GNOC Casino Check #6167

J-31 GNOC Casino Check #6168

J-32 GNOC Casino Check #6169

J-33 Castle Cage Shift Supervisor's Log, dated April 12, 1987 - day shift

J-34 Castle Cage Shift Supervisor's Log, dated April 12, 1987 - swing shift

J-35 Castle Cage Shift Supervisor's Log, dated April 12, 1987 - grave shift

J-36 Castle Disciplinary Action Notice issued to James Thorsby

J-37 Castle Disciplinary Action Notice issued to John Bell

J-38 Castle travel reimbursement form, dated April 15, 1987

J-39 Castle memorandum, dated April 28, 1987, from Ivana Trump to Bucky Howard and Bob Fiore

J-40 Castle travel reimbursement form

J-41 Correspondence, dated April 28, 1987, from Robert Pickus to DAG Joseph Nardi (with attached exhibits)

J-42 Castle Computerized Player Rating Records for Antonio Chan (5 pages)

J-43 Correspondence from DAG Fredric Gushin to Robert Pickus, dated September 17, 1985

J-44 Correspondence from Robert Pickus to DAG Fredric Gushin, dated October 1, 1985 (with attached memorandum)

J-45 Correspondence from DAG Fredric Gushin to Robert Pickus, dated October 29, 1985

J-46 Correspondence from Robert Pickus to DAG Fredric Gushin, dated November 13, 1985 (with attached memorandum of 11 pages)

J-47 Excerpts from Castle's submission to the Casino Control Commission regarding N.J.A.C. 19:47-3.3

J-48 Correspondence from Deno Marino to Fredric Gushin, dated June 19, 1986 (with attached exhibits)

J-49 Correspondence from Fredric Gushin to Deno Marino, dated June 25, 1986

J-50 Castle Inter-Office Correspondence from Thomas Burke to Linc Ebert, dated February 4, 1986, regarding cage paid out procedures

J-51 Castle Inter-Office Correspondence from Thomas Burke to Linc Ebert, dated April 30, 1987, regarding cage paid out procedures

J-52 Castle Hotel and Casino Complimentary Policy and Procedures regarding paid outs

J-53 Castle computerized records regarding Antonio Chan's counter check activity

J-54 Personal check of Antonio Chan payable to "Trump Castle" in the amount of $42,050, dated May 11, 1986

J-55 Boardwalk Regency Corporation check #8363, dated May 10, 1986, payable to Antonio Chan in the amount of $235,000 (front and back)

J-56 Castle Inter-Office Correspondence from Greg Moore to Sue Rizzo, dated May 11, 1986

J-57 Castle computerized complimentary records for Antonio Chan (4 pages)

J-58 Transcripts of sworn investigative interviews of John Loper, Gregory Moore and Bucky Howard, dated November 3, 1986, with attached exhibits

J-59 Transcript of sworn investigative interview of James Thorsby and dated May 8, 1987, with attached exhibits

J-60 Transcript of sworn investigative interview of John Bell, dated May 8, 1987

J-61 Transcript of sworn investigative interview of Lawrence McGuire, dated May 21, 1987 (with attached exhibit)

J-62 Transcripts of sworn investigative interviews of Robert Fiore and Bucky Howard, dated May 21, 1987, with attached exhibits

R-1 Executive Summary of Recommendations by the New Jersey Division of Gaming Enforcement to Amend the Casino Control Act, dated October 1986

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

ORDER
GRANTING AND DENYING MOTION
FOR PARTIAL SUMMARY DECISION
OAL DKT. NOS. CCC 825-87 AND
CCC 5301-87 (CONSOLIDATED)
AGENCY DKT. NOS. 87-214 AND
87-425

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
TRUMP'S CASTLE ASSOCIATES LIMITED PARTNERSHIP, D/B/A TRUMP'S CASTLE HOTEL & CASINO; WILLARD "BUCKY" HOWARD, VICE PRESIDENT FOR CASINO OPERATIONS; ROBERT FIORE, VICE PRESIDENT AND TREASURER; LAWRENCE McGUIRE, CASINO SHIFT MANAGER; GREGORY MOORE, CASINO CAGE SHIFT SUPERVISOR; JAMES THORSBY, CASINO CAGE SHIFT SUPERVISOR; AND JACQUELINE MASON, CASINO CAGE ASSISTANT SHIFT SUPERVISOR,
Respondents.

New Jersey Is An Equal Opportunity Employer

Joseph M. Nardi, III, Deputy Attorney General, on behalf of petitioner (Cary Edwards, Attorney General of New Jersey, attorney)

Robert M. Pickus, Esq., on behalf of respondent Trump's Castle Hotel & Casino

Guy S. Michael, Esq., on behalf of respondent Willard "Bucky" Howard (Brown & Michael, attorneys)

Nicholas L. Ribis, Esq. and **Brian D. Spector,** Esq., on behalf of respondents Robert Fiore, Lawrence McGuire, Gregory Moore, James Thorsby and Jacqueline Mason (Ribis, McCluskey and Graham, attorneys)

BEFORE **SOLOMON A. METZGER,** ALJ:

This matter arises out of two separate complaints filed by petitioner with the Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. The matters were consolidated after transmission to the Office of Administrative Law (OAL) and respondents have now filed a motion to dismiss specified counts within each complaint. For the reasons set forth herein, respondents' motion is denied in part and granted in part.

Petitioner's complaints allege that the entity as well as each individual respondent violated various regulations on separate occasions when they participated in one or another way in providing a particular patron, Antonio Chan, with airfare complimentaries. Petitioner believes that these complimentaries were not given for the stated purpose of defraying the patron's airfare to and from the casino, but rather were a form of payment, credit or debt forgiveness for a high roller.

Respondents' motion concerns itself with three areas. The first involves their alleged failure to demand supporting documentation from the patron in the form of airline tickets or other proof before authorizing complimentaries. In one instance, the allegation is that airline tickets were received but were plainly inapplicable to the trip for which the complimentary was granted. Petitioner believes that these acts and omissions violate N.J.A.C. 19:45-1.2(c)(3) and N.J.A.C. 19:45-1.9(b)(3). Counts 2, 3, 6 and 7 of the first complaint and count 1 of the second complaint are attacked here. The second area involves the assertion that their conduct amounted to the improper issuance of credit or debt forgiveness in violation of N.J.S.A. 5:12-101c and N.J.A.C. 19:49-1.25(a) in that monies designated as airfare complimentaries were used to redeem gambling markers. Counts 2, 3, 8 and 9 of the first complaint, and Count 2 of the second complaint are involved here. Finally, respondents are charged with improperly sharing gambling proceeds with patron Chan by the use of these complimentaries in violation of N.J.S.A. 5:12-104a(1). This part of the motion seeks dismissal of Count 3 of the second complaint.

N.J.A.C. 19:45-1.2 deals with accounting records generally. Subsection (b) provides:

> General accounting records shall be maintained on a double entry system of accounting with transactions recorded on the accrual basis. Detailed, supporting, subsidiary records sufficient to meet the requirements of (c) below shall also be maintained in accordance with the requirements of this chapter.

Subsection (c) then adds:

> The detailed, supporting, and subsidiary records shall include but not necessarily be limited to:
>
> . . . .
>
> 3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. Such records shall include, on a daily basis, the name of each person provided with the complimentary services, the category of services provided, the retail value of the aggregate of each category of services provided to such a person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation.

There appears to be no dispute that the name of the patron, the category of the service, its retail value, and the person authorizing payment were properly reported. Petitioner maintains that respondents were also required to obtain proofs from the patron in the form of airline tickets or other evidence, to support issuance of these complimentaries. The regulation does not say this. Subsection (b) requires that detailed supporting and subsidiary records be maintained consistent with subsection (c). Subsection (c) then identifies nine such areas, and subparagraph 3 creates the regulatory expectation for supporting material in the area of complimentary services. Patron verification is not among these. Petitioner would read such a requirement into the section, pointing particularly to the first sentence of the subsection which again uses the word "supporting." Yet this word is not given meaning until the following sentence where the specific instruction as to what is required is provided.

Whether the interpretation sought by petitioner would on balance be beneficial in this field is a question of policy, and not for the OAL. Here we can say only that where the failure to abide by such an information gathering requirement may result in penalties,

the regulation must be stated more plainly. New Jersey Election Law Enforcement Comm. v. Hunterdon Cty. Democratic Comm., 178 N.J. Super. 233 (App. Div. 1981); State v. Miner Industries, Inc., 177 N.J. Super. 153 (App. Div. 1981).

Petitioner argues that the Commission has already disposed of this issue at the administrative level, in approving the Initial Decision in State of New Jersey v. Greate Bay Hotel and Casino, Inc., et al., OAL DKT. CCC 5460-83. However, the facts there are not comparable. In Greate Bay, the casino had simply not filed required reports, and sought only to mitigate the penalty by arguing that it had later provided estimates of complimentary figures for the incident in question.

The second section alleged to have been violated in connection with improper reporting of complimentaries is N.J.A.C. 19:45-1.9(b)(3), which provides:

> A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by the third party not affiliated with the licensee shall be recorded at an amount based on the actual cost to the licensee of having the third party provide such service or item.

The conclusion above that no verification is required of a patron does not protect respondents from their decision not to verify. They are responsible to report accurately, and they grant complimentaries without verification at their peril, particularly where, as here, the sums involved are substantial. As petitioner points out, the requirement to record at an amount based on the actual cost of providing the service assumes that there has been a cost.

Neither are the other areas noted in the motion ripe for summary decision. These charges also carry a range of argument that what occurred here was, at best, error and, at worst, subterfuge. Proof of the former could well establish an infraction; proof of the latter would go to penalty. Thus, N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25(a) may be violated when loans are made, markers paid, or debts extinguished by other than approved methods. N.J.S.A. 5:12-104a prohibits direct or indirect sharing of money gambled, and a percentage payback to a losing patron might violate this provision.

Based on the foregoing, it is my conclusion that those paragraphs in each count which allege that respondents failed to obtain airfare verification from Mr. Chan or accepted improper verification, even if true, do not violate N.J.A.C. 19:45-1.2(c)(3), and

they are dismissed. However, as each of the counts which alleges a violation of N.J.A.C. 19:45-1.2(c)(3) also alleges one or more other regulatory infractions, it does not appear that any count is ripe for dismissal against any party.

To the extent that petitioner also seems to argue that summary decision is unavailable in the OAL generally or in casino matters specifically, it is without merit. N.J.A.C. 1:1-12.5.

This order may be reviewed by the **CASINO CONTROL COMMISSION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

12/16/87
DATE

SOLOMON A. METZGER, ALJ

ks

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STATE OF NEW JEPSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS.: 87-214
87-425
OAL DOCKET NOS.: CCC 00825-87
CCC 05301-87
(consolidated)

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, v. TRUMP'S CASTLE ASSOCIATES LIMITED PARTNERSHIP, d/b/a TRUMP'S CASTLE HOTEL AND CASINO; WILLARD "BUCKY" HOWARD, VICE PRESIDENT FOR CASINO OPERATIONS; ROBERT FIORE, VICE PRESIDENT AND TREASURER; LAWRENCE McGUIRE, CASINO SHIFT MANAGER; GREGORY MOORE, CASINO CAGE SHIFT SUPERVISOR; JAMES THORSBY, CASINO CAGE SHIFT SUPERVISOR; JACQUELINE MASON, CASINO CAGE ASSISTANT SHIFT SUPERVISOR; AND JOHN BELL, ASSISTANT CASINO SHIFT MANAGER. Respondents.	)	CIVIL ACTION STIPULATION OF FACTS

With the above-captioned matter having been discussed by and among the parties involved, Donald R. Belsole, Acting Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Joseph M. Nardi, III, Deputy Attorney General, Brian D. Spector, Esq., of Ribis, Graham, Verdon and Curtin, and Robert M. Pickus, Esq., Vice President/General Counsel, Trump's Castle Associates Limited Partnership,

Attorneys for Respondents, Trump's Castle Associates Limited Partnership, d/b/a Trump's Castle Hotel and Casino, Robert Fiore, Lawrence McGuire, Gregory Moore, James Thorsby, Jacqueline Mason and John Bell and Guy S. Michael, Esq., of Brown and Michael, Attorneys for Respondent Willard "Bucky" Howard, it is hereby consented to and agreed by and between the parties that the following facts have been stipulated:

1. Trump's Castle Associates Limited Partnership (hereinafter "Castle"), is a New Jersey limited partnership organized under the laws of the State of New Jersey on May 24, 1985 by Donald J. Trump and Trump's Castle Hotel, Inc. since renamed Trump's Castle Hotel and Casino, Inc. Since the time of its organization and at all times referenced herein, Castle has had its principal place of business located at Huron Avenue and Brigantine Boulevard in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Castle is the holder of a plenary casino license issued to it by the Casino Control Commission (hereinafter "Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act (hereinafter "Act") and the regulations promulgated thereunder. Said license was issued to Castle effective June 14, 1985, and has been renewed annually, most recently on May 16, 1988, and Castle has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Castle is the holder of, and operates pursuant to, a Certificate of Operation effective June 19, 1985 and Castle has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles Castle to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Willard "Bucky" Howard is the holder of a casino key employee license, #1105-11, originally issued by the Commission on December 8, 1980, pursuant to Section 89 of the Act. Mr. Howard's casino key employee license was suspended by the Commission on October 28, 1987. At all times referenced herein, Mr. Howard was employed by Castle as a Vice President for Casino Operations and later as a Senior Vice President for Casino Operations.

5. Robert Fiore is the holder of a casino key employee license, #613-11, originally issued by the Commission on August 7, 1980, pursuant to Section 89 of the Act. At all times referenced herein, Mr. Fiore was employed by Castle as a Vice President and Treasurer.

6. Lawrence McGuire is the holder of a casino key employee license, #147-11, originally issued by the Commission on May 21, 1979, pursuant to Section 89 of the Act. At all times referenced herein, Mr. McGuire was employed by Castle as an Assistant Casino Shift Manager and as a Casino Shift Manager.

7. James Thorsby is the holder of a casino key employee license, #22-11, originally issued by the Commission on May 22, 1978, pursuant to Section 89 of the Act. At all times referenced herein, Mr. Thorsby was employed by Castle as a Casino Cage Shift Supervisor.

8. John Bell is the holder of a casino key employee license, #641-11, originally issued by the Commission on June 11, 1980, pursuant to Section 89 of the Act. At all times referenced herein, Mr. Bell was employed by Castle as a Pit Boss and as an Assistant Casino Shift Manager.

9. Gregory Moore is the holder of a casino key employee license, #2339-11, originally issued by the Commission on November 22, 1982, pursuant to Section 89 of the Act. At all times referenced herein, Mr. Moore was employed by Castle as a Casino Cage Shift Supervisor.

10. Jacqueline Mason is the holder of a casino key employee license, #3270-11, originally issued by the Commission on June 12, 1985, pursuant to Section 89 of the Act. At all times referenced herein, Ms. Mason was employed by Castle as a Casino Cage Assistant Shift Supervisor.

11. On or about September 28, 1985, a patron by the name of Antonio Chan was granted a casino credit account at Castle. Pursuant to his casino credit account, Mr. Chan had an approved credit limit at Castle in the amount of $300,000.

12. In his application for credit at Castle, patron Chan represented to Castle credit personnel that he resided at 1229 Acacia Street, Dasmarians, Philippines and that he was the

President of World Wide Sugar, a sugar manufacturing business located at 1000 Wall Street, New York, New York, 10005. A copy of patron Chan's credit application is attached hereto as Exhibit J-1.

13. On September 28, 1985, patron Chan played baccarat at Castle and, according to player ratings records maintained by Castle, sustained net gambling losses of $50,000.

14. On September 28, 1985, Cage Shift Supervisor Thorsby processed a travel complimentary in the amount of $4,200 in the name of patron Chan. Cage Shift Supervisor Thorsby prepared Paid Out Voucher #726760, a copy of which is attached hereto as Exhibit J-2, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #726760 states that the payment was authorized by Casino Shift Manager McGuire.

15. During the transaction of September 28, 1985, as described in paragraph 14, supra, neither Cage Shift Supervisor Thorsby nor Casino Shift Manager McGuire obtained any travel receipts or other documentation from patron Chan which indicated any travel expenses incurred by patron Chan.

16. On December 13, 1985, patron Chan played baccarat at Castle and, according to player rating records maintained by Castle, sustained net gambling losses of $200,300.

17. On December 14, 1985, Cage Shift Supervisor Thorsby processed a travel complimentary in the amount of $16,800 in the name of patron Chan. Cage Shift Supervisor Thorsby prepared Paid Out Voucher #746810, a copy of which is attached hereto as Exhibit J-3, to record the issuance of the complimentary to

patron Chan. Paid Out Voucher #746810 states that the payment was authorized by Casino Shift Manager McGuire and Vice President for Casino Operations Howard.

18. During the transaction of December 14, 1985, as described in paragraph 17, supra, neither Cage Shift Supervisor Thorsby, Casino Shift Manager McGuire nor Vice President for Casino Operations Howard obtained any travel receipts or other documentation from patron Chan which indicated any travel expenses incurred by patron Chan.

19. During the course of patron Chan's baccarat play on December 13, 1985, he was issued 2 counter checks in the individual amounts of $100,000 at the baccarat pit. The document identification numbers of the counter checks are #0968633 and #0968646.

20. Patron Chan redeemed counter checks #0968633 and #0968646 on December 14, 1985. At that time, Cage Shift Supervisor Thorsby prepared Redemption Voucher #746807, a copy of which is attached hereto as Exhibit J-4. Redemption Voucher #746807 indicates that counter checks #0968633 and #0968646 were redeemed with cash of $16,800 and a personal check in the amount of $183,200.

21. The amount of cash that was used in the redemption of counter checks #0968633 and #0968646, as described in paragraph 20, supra, was the same amount of cash that was recorded as a travel complimentary to patron Chan, as described in paragraph 17, supra.

22. On February 1, 1986, patron Chan played baccarat at Castle and, according to player rating records maintained by Castle, sustained net gambling losses of $150,000.

23. On February 2, 1986, Cage Shift Supervisor Thorsby processed a travel complimentary in the amount of $12,600 in the name of patron Chan. Cage Shift Supervisor Thorsby prepared Paid Out Voucher #759244, a copy of which is attached hereto as Exhibit J-5, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #759244 states that the payment was authorized by Casino Shift Manager McGuire.

24. During the transaction of February 2, 1986, as described in paragraph 23, supra, neither Cage Shift Supervisor Thorsby nor Casino Shift Manager McGuire obtained any travel receipts or other documentation from patron Chan which indicated any travel expenses incurred by patron Chan.

25. On May 10, 1986, patron Chan played baccarat at Castle and, according to player rating records maintained by Castle, sustained net gambling losses of $300,000.

26. Casino Cage Shift Supervisor Moore stated during the course of a sworn investigative interview conducted by the Division that Vice President for Casino Operations Howard instructed him on May 11, 1986 to prepare a Paid Out Voucher in the amount of $25,200 for the purpose of providing patron Chan with reimbursement for his travel airfare.

27. Subsequent to Mr. Howard's instructions as described in paragraph 26, supra, Cage Shift Supervisor Moore contacted Vice President and Treasurer Fiore to obtain authorization to

prepare the Paid Out Voucher for the benefit of patron Chan. Mr. Fiore orally authorized Mr. Moore to prepare the Paid Out Voucher and instructed him to forward the Paid Out Voucher to Mr. Fiore's office so that Mr. Fiore and Castle Executive Vice President Ivana Trump, #3417-11, could sign the Paid Out Voucher.

28. Subsequent to Mr. Howard's instructions and Mr. Fiore's authorization, as described in paragraphs 26 and 27, supra, Cage Shift Supervisor Moore processed a travel complimentary in the amount of $25,200 in the name of patron Chan. Mr. Moore prepared Paid Out Voucher #784572, a copy of which is attached hereto as Exhibit J-6, to record the issuance of the complimentary to patron Chan. During the transaction, neither Vice President for Casino Operations Howard, Vice President and Treasurer Fiore, nor Cage Shift Supervisor Moore obtained any travel receipts or other documentation from patron Chan which indicated any travel expenses incurred by patron Chan.

29. During the course of patron Chan's baccarat play on May 11, 1986, he was issued 3 counter checks each in the individual amount of $100,000 at the baccarat pit. The document identification numbers of the counter checks are #1027737, #1027761 and #1027773.

30. During the course of patron Chan's baccarat play on May 11, 1986, he incurred vigorish in the amount of $2,250. Pursuant to the rules of the game of baccarat, "vigorish" is a charge collected from a gaming patron based on the amount won on

a wager made on a "Banker's Hand", as set forth in N.J.A.C. 19:47-3.3.

31. When patron Chan completed playing baccarat on May 10, 1986, he vacated the baccarat pit without paying his vigorish. Pit personnel prepared a note which stated the amount of vigorish owed by patron Chan and further stated that patron Chan was not permitted to resume play until the vigorish was paid. The note was retained at the baccarat pit.

32. After patron Chan departed from the baccarat pit on May 10, 1986, new decks of cards were shuffled and the remaining baccarat players resumed play.

33. Patron Chan redeemed counter checks #1027737, #1027761 and #1027773 referred to in paragraph 29, supra, at or about 3:32 p.m. on May 11, 1986. At that time, Cage Shift Supervisor Moore prepared Redemption Voucher #784603, a copy of which is attached hereto as Exhibit J-7. Prior to the preparation of Redemption Voucher #784603, Cage Shift Supervisor Moore had prepared 2 other Redemption Vouchers, #784575 and #784585, copies of which are attached hereto as Exhibits J-8 and J-9, respectively. Redemption Voucher #784575 was prepared at or about 2:19 p.m. Redemption Voucher #784585 was prepared at or about 2:36 p.m. Cage Shift Supervisor Moore voided both Redemption Vouchers because they contained incorrect information regarding the amounts received from patron Chan in the redemption transaction. Redemption Voucher #784603 indicates that counter checks #1027737, #1027761 and #1027773 were redeemed with a personal check in the amount of $42,060,

Boardwalk Regency Corporation check #8363 payable to Antonio Chan in the amount of $235,000 and cash in the amount of $22,950.

34. During the course of a sworn investigative interview conducted by the Division, Casino Cage Shift Supervisor Moore stated that the $22,950 in cash that was used in the redemption of counter checks #1027737, #1027761 and #102773, as described in paragraph 33, supra, was a portion of the $25,200 in cash that was recorded as a travel complimentary to patron Chan, as described in paragraph 28, supra.

35. Following the redemption transaction described in paragraph 33, supra, a balance of $2,250 remained from Paid Out Voucher #784572, which balance was to be deposited in the drop box at the baccarat pit to pay off patron Chan's outstanding vigorish obligation.

37. Prior to depositing the $2,250 in the drop box at the baccarat pit, casino personnel informed Senior Commission Inspector Michael Kurtz that the cash would be carried to the baccarat pit and deposited for the purpose of paying off patron Chan's outstanding vigorish obligation. Inspector Kurtz then observed the payment of the vigorish and notified his supervisor of the transaction.

38. Following the redemption of patron Chan's counter checks on May 11, 1986 as described in paragraph 33, supra, and after informing Inspector Kurtz that the cash would be deposited, the balance of $2,250 was carried by casino personnel to the baccarat pit where patron Chan had incurred vigorish on

May 10, 1986. The $2,250 in cash was then deposited in the drop box at the baccarat pit.

39. As a result of the payment of vigorish by Castle personnel, as described in paragraphs 36 and 37, supra, Commission Principal Inspector John Mull cited Castle for violations of N.J.A.C. 19:45-1.18 and N.J.A.C. 19:47-3.3. Attached hereto as Exhibits J-10 and J-11 are copies of the Casino Control Commission's Violation Reports 5-2 and 5-3, dated May 16, 1986, issued by Principal Inspector Mull. Principal Inspector Mull notified the Division of his findings on May 12, 1986. Thereafter, the Division commenced its investigation into this matter in mid-May, 1986.

40. At the time Boardwalk Regency Corporation check #8363 was received for use in patron Chan's redemption transaction, as described in paragraph 33, supra, Castle Cage personnel did not record the reason why the check was issued by Boardwalk Regency Corporation in the Castle casino check log which is maintained in the cage. Castle cage personnel also did not document the identification credentials that were presented by patron Chan or if such identification was presented. A copy of the Castle casino check log for the month of May, 1986 is attached hereto as Exhibit J-12.

41. At the time that Castle cage personnel received Boardwalk Regency Corporation check #8363 from patron Chan, Cage Shift Supervisor Moore stamped the check with the current date and time. The date and time stamp on check #8363 are May 11, 1986 and 2:29 p.m.

42. Cage Shift Supervisor Moore telephoned Boardwalk Regency Corporation at approximately 2:53 p.m. on May 11, 1986 and documented the telephone call in the Castle casino check log. Cage Shift Supervisor Moore's purpose in telephoning Boardwalk Regency Corporation was to verify information regarding Boardwalk Regency Corporation check #8363.

43. On May 14, 1986, patron Chan played baccarat at Castle and, according to player rating records maintained by Castle, sustained net gambling losses of $130,000. At the conclusion of his gambling activity on May 14, 1986, patron Chan's outstanding casino credit balance at Castle was $130,000.

44. On June 3, 1986, Cage Assistant Shift Supervisor Mason processed a travel complimentary in the amount of $10,500 in the name of patron Chan. Cage Assistant Shift Supervisor Mason prepared Paid Out Voucher #790935, a copy of which is attached hereto as Exhibit J-13, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #790935 states that the payment was authorized by Vice President for Casino Operations Howard and Casino Shift Manager McGuire.

45. During the transaction of June 3, 1986, as described in paragraph 44, supra, neither Cage Assistant Shift Supervisor Mason, Casino Shift Manager McGuire nor Vice President for Casino Operations Howard obtained any travel receipts or other documentation from patron Chan which indicated any travel expenses incurred by patron Chan.

46. During the course of patron Chan's baccarat play on May 14, 1986, he was issued 2 counter checks in the individual

amounts of $100,000 and $30,000. The document identification numbers of the counter checks are #1029153 and #1029165.

47. Patron Chan redeemed counter checks #1029153 and #1029165 on June 3, 1986. At that time, Cage Assistant Shift Supervisor Mason prepared Redemption Voucher #790938, a copy of which is attached hereto as Exhibit J-14. Redemption Voucher #790938 indicates that counter checks #1029153 and #1029165 were redeemed with cash of $10,500, a personal check in the amount of $19,500 and casino checks in the amount of $100,000.

48. During the course of an informal interview conducted by the Division, Cage Assistant Shift Supervisor Mason stated that the $10,500 in cash that was used in the redemption of counter checks #1029153 and #1029165, as described in paragraph 47, supra, was the same cash that was recorded as a travel complimentary to patron Chan, as described in paragraph 44, supra.

49. Following an investigation of the events described in paragraphs 11 through 48, supra, the Division filed a complaint on November 24, 1986 against Castle, Vice President for Casino Operations Howard, Vice President and Treasurer Fiore, Casino Shift Manager McGuire, Cage Shift Supervisor Moore, Cage Shift Supervisor Thorsby and Cage Assistant Shift Supervisor Mason alleging violations of N.J.S.A. 5:12-101(a) and (c), N.J.A.C. 19:45-1.25(a), N.J.A.C. 19:45-1.2(c)3, N.J.A.C. 19:45-1.9(b)3, N.J.A.C. 19:47-3.3, N.J.S.A. 5:12-99(a)(16), N.J.S.A. 5:12-100(a), N.J.A.C. 19:45-1.25(e) and (f) and N.J.A.C. 19:45-1.26(a).

50. On April 11, 1987, patron Chan played baccarat at Castle and, according to player ratings records maintained by Castle, sustained net gambling losses of $300,000.

51. On April 13, 1987, at approximately 3:55 a.m., (gaming day April 12, 1987), Cage Shift Supervisor Thorsby processed a travel complimentary in the amount of $17,907 in the name of patron Chan. Cage Shift Supervisor Thorsby prepared Paid Out Voucher #882141, a copy of which is attached hereto as Exhibit J-15, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #882141 states that the payment was authorized by Senior Vice President of Operations Howard.

52. During the transaction of April 13, 1987, as described in paragraph 51, supra, Cage Shift Supervisor Thorsby obtained 7 airline tickets from patron Chan. The 7 airline tickets obtained had the following characteristics:

a.) one ticket was issued by British Airways London, dated April 11, 1987 in the amount of 3,180 British pounds, in the name of "Mr. A. Chan" and listed London, New York and London as points of passage;

b.) one ticket was issued by Philippine Airlines, dated November 10, 1986, in the amount of $3,038, in the name of "Mr. A. Chan" and listed Manila, San Francisco and Manila as points of passage;

c.) one ticket was issued by Trans World Airlines, dated November 19, 1977, in the amount of $1,368,

in the name of "Mr. A. Chan" and listed New York, Paris, London and New York as points of passage;

d.) one ticket was issued by Pan Am, dated March 2, 1984, in the amount of $3,352.40, in the name of "Mr. A. Chan" and listed Manila, Tokyo, New York, London and New York as points of passage;

e.) one ticket was issued by Pan Am, dated February 12, 1985, in the amount of $3,858, in the name of "Mr. A. Chan" and listed New York, San Francisco, Manila, Tokyo and New York as points of passage;

f.) one ticket was issued by Avianca (the Columbian International Airline), dated July 9, 1975, in the amount of $711, in the name of "Antonio Chan" and listed New York, Bogota and New York as points of passage;

g.) one ticket was issued by Pan Am, dated May 19, 1986, in the amount of 274 British pounds, in the name of "Mr. A. Chan" and listed London, Geneva and London as points of passage.

Copies of the 7 tickets are attached hereto as Exhibits J-16 through J-22.

53. The 2 airline tickets obtained from patron Chan by Cage Shift Supervisor Thorsby which listed the amounts in British pounds, as described in paragraphs 52(a) and (g), supra, were converted to United States dollar amounts of $4,924 and $655, respectively, by Mr. Thorsby. The foreign currency

exchange rate for British pounds, as of April 12, 1987, was used in the computation.

54. The total amount of the tickets obtained from patron Chan by Cage Shift Supervisor Thorsby, as described in paragraphs 51, 52 and 53, supra, was $17,906.40.

55. Also on April 13, 1987, at approximately 4:16 a.m. (gaming day April 12, 1987), Cage Shift Supervisor Thorsby processed a second travel complimentary in the amount of $3,165 in the name of patron Chan. Cage Shift Supervisor Thorsby prepared Paid Out Voucher #882152, a copy of which is attached hereto as Exhibit J-23, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #882152 states that the payment was authorized by Senior Vice President for Casino Operations Howard.

56. At the time that Cage Shift Supervisor Thorsby prepared Paid Out Voucher #882152 for patron Chan, as described in paragraph 55, supra, Mr. Thorsby obtained 2 airline tickets from patron Chan.

57. The 2 airline tickets obtained from patron Chan by Cage Shift Supervisor Thorsby, as described in paragraph 56, supra, had the following characteristics:

a.) one ticket was issued by British Airways, dated April 9, 1987, in the amount of 292 British pounds, in the name of a person travelling with patron Chan and listed London, Geneva and London as points of passage;

b.) one ticket was issued by Singapore Airlines, dated April 7, 1987, in the amount of $2,714, in the name of a person travelling with patron Chan and listed Manila, Singapore, London, Singapore and Manila as points of passage.

Copies of the 2 tickets are attached hereto as Exhibits J-24 and J-25.

58. The 1 airline ticket obtained from patron Chan by Cage Shift Supervisor Thorsby which listed the amount in British pounds, as described in paragraph 57(a), supra, was converted to the United States dollar amount of $451 by Mr. Thorsby. The foreign currency exchange rate for British pounds, as of April 12, 1987, was used in the computation.

59. The total amount paid to patron Chan and recorded as travel complimentaries on April 13, 1987, (gaming day April 12, 1987) and as represented by Paid Out Vouchers #882141 and #882152, as described in paragraphs 51 and 55, supra, was $21,072.

60. At the time that the transactions were being conducted with patron Chan on April 13, 1987, as described in paragraphs 51 through 59, supra, Assistant Casino Shift Manager Bell was the highest ranking representative of the casino games department on the Castle premises. Mr. Bell reviewed and initialled Paid Out Vouchers #882141 and #882152 after Cage Shift Supervisor Thorsby had prepared the vouchers. Neither Senior Vice President for Casino Operations Howard, Vice President and Treasurer Fiore nor Casino Shift Manager McGuire

were on the Castle premises. During the course of the transactions, however, Mr. Fiore was contacted at his home by Mr. Thorsby; likewise, Mr. McGuire was contacted at his home by Mr. Bell during the course of the transactions with patron Chan.

61. During the course of patron Chan's baccarat play on April 11, 1987, he was issued 3 counter checks in the individual amounts of $200,000, $5,000 and $95,000. The document identification numbers of the counter checks are #1184146, #1184048 and #1184148.

62. Patron Chan redeemed counter checks #1184048 ($5,000) and #1184146 ($200,000) on April 13, 1987 (gaming day April 12, 1987). At approximately 4:13 a.m. on that date, Cage Shift Supervisor Thorsby prepared Redemption Voucher #882149, a copy of which is attached hereto as Exhibit J-26. Redemption Voucher #882149 indicates that counter checks #1184048 and #1184146 were redeemed with $5,000 in cash and $200,000 in the form of casino checks.

63. Patron Chan also redeemed counter check #1184148 on April 13, 1987 (gaming day April 12, 1987). At approximately 4:15 a.m. on that date, Cage Shift Supervisor Thorsby prepared Redemption Voucher #882151, a copy of which is attached hereto as Exhibit J-27. Redemption Voucher #882151 indicates that counter check #1184148 was redeemed with $3,000 in cash and $92,000 in casino checks.

64. The total of $8,000 in cash that was used in the redemption of counter checks #1184048, #1184146 and #1184148 on April 13, 1987, as described in paragraphs 62 and 63, supra, was

a portion of the $21,072 that was recorded as travel complimentaries to patron Chan, as described in paragraphs 51, 55, and 59, supra.

65. Also on April 13, 1987, at approximately 2:53 p.m., Cage Shift Supervisor Moore prepared a third travel complimentary in the amount of $3,871 in the name of patron Chan. Cage Shift Supervisor Moore prepared Paid Out Voucher #882171, a copy of which is attached hereto as Exhibit J-28, to record the issuance of the complimentary to patron Chan. Paid Out Voucher #882171 states that the payment was authorized by Senior Vice President for Casino Operations Howard.

66. At the time that Cage Shift Supervisor Moore prepared Paid Out Voucher #882171 for patron Chan, as described in paragraph 65, supra, Mr. Moore obtained 1 airline ticket from patron Chan.

67. The airline ticket obtained from patron Chan by Cage Shift Supervisor Thorsby, as described in paragraph 66, supra, was issued by United Airlines, dated April 13, 1987, in the amount of $3,871.00, in the name of a person travelling with patron Chan and listed New York, San Francisco, Manila, San Francisco and New York as points of passage. A copy of the airline ticket is attached hereto as Exhibit J-29.

68. The $292,000 in casino checks that were accepted by Cage Shift Supervisor Thorsby in the redemption of counter checks #1184048, #1184146 and #1184148 on April 13, 1987, as described in paragraphs 62 and 63, supra, were issued by GNOC

Corp. and were made payable to Antonio Chan. Copies of the casino checks were attached hereto as Exhibit J-30 through J-32.

69. During the course of a sworn investigative interview conducted by the Division, Casino Shift Manager McGuire stated that he had been informed that Senior Vice President for Operations Howard had authorized travel complimentaries to patron Chan on April 12, 1987. Mr. McGuire testified that he could not recall who had told this to him. He added that he had not discussed the payment with Mr. Howard. In addition, Casino Shift Manager Jim McDermott, #642-11, stated during the course of an informal interview conducted by the Division that he recalled speaking to Mr. Howard prior to patron Chan's arrival on April 12, 1987. He stated that if he did initial or sign the paid out voucher for the patron, he would first call Bucky Howard to obtain clearance for the authorization. The authorization for travel complimentaries to patron Chan in an amount not to exceed $25,200 was memorialized in the Castle Cage Shift Supervisor's log book which is maintained in the casino cage. Excerpts from the log book from the day, swing and grave shifts for April 12, 1987 are attached hereto as Exhibits J-33 through J-35.

70. Following the events of April 11-13, 1987 as described in paragraphs 50 through 69, supra, Castle took the following action:

a. Cage Shift Supervisor Thorsby and Assistant Casino Shift Manager Bell received written warnings and 3 day suspensions from Castle for their conduct during the transactions with patron Chan on April 13, 1987. Copies of the disciplinary notices issued to Mr. Thorsby and Mr. Bell are attached hereto as Exhibits J-36 and J-37;

b. Casino Shift Manager McGuire travelled to New York on April 15, 1987 to meet with patron Chan and obtain patron Chan's signature on a travel reimbursement form which was prepared by Castle on or about April 13, 1987. A copy of the signed travel reimbursement form is attached hereto as Exhibit J-38;

c. Executive Vice President Ivana Trump forwarded a memo to Senior Vice President for Casino Operations Howard and Vice President and Treasurer Fiore, dated April 28, 1987 regarding Cage Paid Out Procedures. Attached to Executive Vice President Trump's memo was a travel reimbursement form. Copies of the memo and the travel reimbursement form are attached hereto as Exhibits J-39 and J-40.

71. On or about April 16, 1987, Castle notified the Division of the transactions between Castle and patron Chan

which occurred during the period from April 11, 1987 to April 13, 1987, as described in paragraphs 50 through 70, supra. Thereafter, by letter dated April 28, 1987, a copy of which is attached hereto as Exhibit J-41, Castle informed the Division of the results of Castle's internal investigation.

72. Following the Division's investigation of the events described in paragraphs 50 through 71, supra, the Division filed a second complaint on June 9, 1987, against Castle, Senior Vice President for Casino Operations Howard, Vice President and Treasurer Fiore, Casino Shift Manager McGuire, Assistant Casino Shift Manager Bell and Cage Shift Supervisor Thorsby alleging violations of N.J.S.A. 5:12-101(a) and (c), N.J.A.C. 19:45-1.25(a), N.J.A.C. 19:45-1.2(c)3, N.J.A.C. 19:45-1.9(b)3, N.J.S.A. 5:12-104(a)(1) and N.J.A.C. 19:45-1.26(a).

73. The Division's 2 complaints in this matter were consolidated with the consent of all parties during a prehearing conference conducted by the Honorable Solomon A. Metzger, A.L.J. on October 16, 1987.

74. In addition to the 2 complaints which are the subject of this matter, Castle has been named as a respondent in 3 other complaints filed by the Division with the Commission, 1 involving employee licensing which resulted in a final determination by the Commission, 1 involving advertising violations which resulted in a recommended penalty by the Office of Administrative Law and is scheduled to be heard by the Commission and 1 involving credit violations not raised in the

instant matter, which complaint was recently filed with the Commission.

By: _____
Joseph M. Nardi, III
Deputy Attorney General
Attorney for Plaintiff
State of New Jersey
Department of Law and Public
Safety, Division of Gaming
Enforcement

Dated: 7/15/88

By: _____
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Dated: 7/1/88

By: _____
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Dated: 7/15/88

By: _____
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Attorneys for Respondents
Castle, Fiore, McGuire, Bell,
Thorsby, Moore and Mason

Dated: 7/5/88

021988/38

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-385
OAL DOCKET NO. CCC 6178-88
ORDER NO. 89-24-15

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
TRUMP'S CASTLE ASSOCIATES LIMITED PARTNERSHIP, t/a TRUMP'S CASTLE HOTEL AND CASINO	:
Respondent.	:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of facts and settlement entered into by Trump's Castle Associates Limited Partnership (Trump's Castle) and the Division of Gaming Enforcement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 14, 1989,

IT IS on this 20th day of June 1989, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Trump's Castle pay a civil penalty in the amount of $140,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 6178-88
AGENCY DKT. NO. 88-385

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
TRUMP'S CASTLE ASSOCIATES
LIMITED PARTNERSHIP, T/A
TRUMP's CASTLE HOTEL AND CASINO,
Respondent.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Joseph A. Fusco, Esq., Brian D. Spector, Esq., (Ribis, Graham, Verdon & Curtin, attorneys)
and
Robert M. Pickus, Esq., for respondent

Record Closed: April 10, 1989 **Decided: April 14, 1989**

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a five count, 95 paragraph complaint with the Casino Control

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Commission (Commission) on June 3, 1988, seeking sanctions against respondent Trump's Castle Association Limited Partnership (Trump's Castle) for its alleged violation of certain accounting and internal controls regulations found at N.J.A.C. 19:45-1.25 et seq. and N.J.A.C. 19:45-1.27 et seq. concerning the granting of credit, and the procedures related thereto. Respondent Trump's Castle filed its timely Answer to the Complaint by way of Notice of Defense and Request for Hearing.

PROCEDURAL ASPECTS

Subsequent to the Commission's receipt of respondent's Notice and Request for Hearing on August 10, 1988, the Commission, on August 19, 1988, transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On November 3, 1988, a prehearing conference was held at the Atlantic City OAL, Atlantic City Civil Courthouse, Atlantic City, New Jersey. Due to the complexity of the issues to be resolved, the parties were granted leave to confer and submit a statement of the relevant issues to be addressed and decided by this administrative tribunal at a later date.

ISSUES

The legal issues as agreed upon by the parties were submitted to the undersigned on December 2, 1988, and are as follows:

Count One

1. **Whether or not respondent violated N.J.A.C. 19:45-1.27(a)1 and (c) 4i, iii, iv, vi and vii as alleged in paragraphs 58 through 60.**

   A. Did the examination of identification credentials as described in paragraph 26 and the information received from CBI (Credit Bureau Incorporated) as described in paragraph 18 constitute obtaining, verifying and recording the address of Mr. Richard Hartman?

   B. Did the information received from CCLV (Central Credit of Las Vegas) and Harrah's as described in paragraph 59 provide adequate verification of Hartman's checking account information?

C. Was the information obtained from CCLV and the information obtained from Harrah's as described in paragraphs 19 through 22 "conflicting information" as alleged in the Division's complaint?

(1) In the event the information regarding Mr. Hartman's checking account was "conflicting" as alleged by the Division, was such conflicting information nevertheless sufficient for the "adequate" verification of Mr. Hartman's checking account?

D. Did respondent violate N.J.A.C. 19:45-1.27 (c) 4 vii by obtaining information directly from Harrah's Marina as described in paragraphs 27 and 60 and not recording the name and title of the person supplying said information?

Count Two

1. Whether or not respondent violated N.J.A.C. 19:45-1.27 (a) and (f), as alleged in paragraph 69.

A. Do the cited regulations require the verification of the patron's income?

B. Was the information obtained from CCLV and the information obtained from Harrah's as described in paragraphs 19 through 22 "conflicting information" as alleged in the Division's complaint?

(1) In the event the information regarding the patron's checking account was "conflicting information" as alleged by the Division, was such conflicting information material to the extent of rendering the credit decision unsupported by the information contained in the credit file?

C. Did the current casino credit lines and outstanding balances at Trump Plaza and Sands totaling $1.4 million at the time Mr. Hartman was issued credit in the amount of $500,000 render the credit decision unsupported by the information contained in the credit file?

D. Did the fact that Mr. Hartman had previous stop payment orders on $700,000 in counterchecks in or about 1984 at five other casinos in Atlantic City resulting in writeoffs render the credit decision unsupported by the information contained in the credit file?

E. Did the information contained in the CBI and CBA (Credit Bureau Association) credit reports constitute "derogatory information?"

(1) Did the information regarding a $1,600 judgment disclosed in the CBI and CBA credit reports, dated September 1984, pertaining to a suit involving the New York City Department of Finance constitute "derogatory information?"

(2) Assuming the information disclosed in the CBI and CBA credit reports was "derogatory information", did the respondent document the reason credit was approved, as required pursuant to N.J.A.C. 19:45-1.27(f)3?

F. Whether N.J.A.C. 19:45-1.27 limited the respondent's business decision to issue credit to patron, Richard Hartman, once the regulatory required information was documented and considered.

Count Three

1. Did respondent violate N.J.A.C. 19:45-1.25(e) by failing to determine the validity of an $817,000 certified check prior to the acceptance of said check as alleged in paragraphs 38, 75 and 77?

A. Does N.J.A.C. 19:45-1.25(e) require a casino licensee to contact the issuer of a cash equivalent directly prior to acceptance?

B. Did respondent's verification of said cash equivalent through use of its own internal cage procedures comply with the requirements of N.J.A.C. 19:45-1.25(e)?

Count Four

1. Whether or not respondent violated N.J.A.C. 19:45-1.27(a) and (f), as alleged in paragraph 88?

A. Does the cited regulation require the verification of the patron's income?

B. Was the information obtained from CCLV and Harrah's as described in paragraphs 19 through 22 "conflicting information" as alleged in the Division's complaint?

(1) In the event the information regarding the patron's checking account was "conflicting information" as alleged by the Division, was

such conflicting information material to the extent of rendering the credit decision unsupported by the information contained in the credit file?

C. Did the current casino credit lines and outstanding balances at Trump Plaza and Resorts totaling $1.5 million at the time Mr. Hartman was issued credit in the amount of $500,000 render the credit decision unsupported by the information contained in the credit file?

D. Did the fact that Mr. Hartman had previous stop payment orders on $700,000 in counterchecks in or about 1984 at five other casinos in Atlantic City resulting in writeoffs render the credit decision unsupported by the information contained in the credit file?

E. Did the information contained in the CBI and CBA credit reports constitute "derogatory information?"

(1) Did the information regarding a $1,600 judgment disclosed in the CBA credit report, dated September, 1984, pertaining to a suit involving the New York City Department of Finance constitute "derogatory information?"

(2) Assuming the information disclosed in the CBI credit report and/or CBA credit report was "derogatory information", did the respondent document the reason credit was approved, as required pursuant to N.J.A.C. 19:45-1.27(f)3?

F. Whether N.J.A.C. 19:45-1.27 limited the respondent's business decision to increase the patron's credit limit once the regulatory required information was documented and considered.

Count Five

1. Did respondent violate N.J.A.C. 19:45-1.27(g) by failing to verify Mr. Hartman's current approved credit limits prior to approving a credit increase as alleged in paragraph 92?

2. Did respondent violate N.J.A.C. 19:45-1.27(g) by relying on Mr. Hartman's promise to provide to respondent a personal check for $500,000 in approving his credit limit increase, as alleged in paragraphs 93 through 95?

A. Was this promise made by Mr. Hartman used to support the change in credit limit?

B. Was this promise by Mr. Hartman a key factor relied upon in approving Mr. Hartman's credit limit?

C. Assuming Mr. Hartman's promise to tender a personal check was used to support the credit limit increase and/or was a key factor in approving his credit limit increase, does N.J.A.C. 19:45-1.27(g) authorize the approval of a casino credit limit increase based, in part, upon such a promise?

SETTLEMENT DISCUSSIONS

Prior to the plenary hearing, scheduled for February 23, 24, 27, 28 and March 1, 1989, the undersigned was advised by the parties that they were engaged in settlement negotiations and discussions and that a stipulation of settlement would follow. Accordingly, the hearing dates were adjourned. On April 10, 1989, the undersigned was in receipt of the settlement.

THE SETTLEMENT AGREEMENT

As a consequence of extensive discussions and negotiations, the parties entered into a duly executed Stipulation of Facts and Settlement Agreement. The stipulation and settlement is accompanied with a set of 33 exhibits which form the basis of the Division's complaint and are incorporated in this decision by reference. The Stipulation of Facts are not recited here but, rather, its 56 paragraphs are also incorporated herein by reference.

Therefore, a recital of the settlement terms and conditions are set forth below as follows:

SETTLEMENT

Whereas, the parties have endeavored to submit to the Office of Administrative Law and the Casino Control Commission a detailed submission of all material and relevant facts pertinent to the allegations contained in Division Complaint No. 88-385. Additionally, the parties submit for purposes of this Stipulation of Facts and Settlement Agreement various exhibits described in the Table of Exhibits attached hereto, and

Whereas, with respect to Counts I and II of Division Complaint No. 88-385, respondent admits the following violations with respect to its September 12, 1987 decision to approve a $500,000 credit limit for Richard Hartman:

(1) Respondent did not obtain from Mr. Hartman, as opposed to other sources, verify and record in his credit file, his residence address, in violation of N.J.A.C. 19:45-1.27(a)2 and (c)1;

(2) Respondent did not adequately verify and record in his credit file the type, balances, date opened and signatory of his checking account, and the name and title of the person supplying the bank information, in violation of N.J.A.C. 19:45-1.27(c)4 i, iii, iv, v, vi, and vii;

(3) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit, in violation of N.J.A.C. 19:45-1.27(f) 1 and 2; and

(4) Respondent did not adequately record in his credit file the reasons credit was approved in light of his 1984 casino credit problems, in violation of N.J.A.C. 19:45-1.27(f) 3.

Whereas, with respect to Count III of Division Complaint No. 88-385, respondent admits that its acceptance from Mr. Hartman during non-banking hours on September 22, 1987 of a check signed by and payable to him and certified by the Irving Trust Company without having first verified directly with Irving Trust Company, violated N.J.A.C. 19:45-1.25(e) by virtue of the specific factors set forth below:

(1) The $817,000 amount of the check;

(2) The fact that the number of the account against which it was drawn was handwritten rather than printed thereon;

(3) His approved credit limits and outstanding credit balances with respondent and other New Jersey casino licensees;

(4) Its not having previously accepted any check certified by the Irving Trust Company or any certified check from Mr. Hartman; and

(5) His 1984 casino credit problems.

Whereas, with respect to Counts IV and V of Division Complaint No. 88-385, respondent admits that its October 17, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000 violated N.J.A.C. 19:45-1.27(a) by virtue of such increase not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent did not adequately record in Mr. Hartman's credit file all available current casino credit limits on October 17, 1987, in violation of N.J.A.C. 19:45-1.27(g)2;

(2) Respondent did not adequately record in Mr. Hartman's credit file the reasons the increase was approved in violation of N.J.A.C. 19:45-1.27(f)3, in light of:

(a) The initial deficiencies in its decision to extend credit as set forth above with respect to Counts I and II;

(b) Mr. Hartman's then outstanding credit balances at other Atlantic City casinos; and

(c) Mr. Hartman's gaming losses at respondent's casino during the period between the initial extension of credit and the approval of the increase.

Whereas, the parties hereby stipulate and agree that the stipulations and agreements contained herein are for purposes of this action only and are entered into as a full and final settlement of all matters and issues raised by Division Complaint No. 88-385.

Whereas, the parties hereby stipulate and agree that the validity and enforceability of counterchecks 1277584 and 1279741 under N.J.S.A. 5:12-101 is not an issue addressed in this action and respondent does not waive its rights with respect to this issue in a separate proceeding.

It is therefore consented to and agreed upon by and between the parties that:

A. Respondent Trump's Castle Associates agrees to pay the sum of fifty thousand dollars ($50,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a)2, 1.27(c)1, 1.27(c)4, and 1.27(f) relative to Counts I and II of Division Complaint No. 88-385.

B. Respondent Trump's Castle Associates agrees to pay the sum of twenty thousand dollars ($20,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violation of N.J.A.C. 19:45-1.25(e) relative to Count III of Division Complaint No. 88-385.

C. Respondent Trump's Castle Associates agrees to pay the sum of seventy thousand dollars ($70,000) to the New Jersey Casino Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a), 1.27(f)3, and 1.27(g)2 relative to Counts IV and V of Division Complaint No. 88-385.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations set forth in Division Complaint No. 88-385.

FINDINGS

Having reviewed and considered the entire record before me, I **FIND** that:

1. The parties have voluntarily entered into the settlement of this matter as evidenced by their respective signatures on the Stipulation of Facts and Settlement Agreement; and

2. The settlement is a fair one under the circumstances and disposes of all issues in controversy between the parties in this case; and

3. The settlement is consistent with the law.

CONCLUSIONS

I **CONCLUDE**, therefore, that the proposed penalties totaling an amount of $140,000 upon Trump's Castle Associates Limited Partnership is appropriate and shall be imposed.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and

therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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

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

14 April 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

4/18/89
DATE

Marianne Farm
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 19 1989
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

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RECEIVED
APR 10 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 6178-88
AGENCY DOCKET NO. 88-385

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. TRUMP'S CASTLE ASSOCIATES LIMITED PARTNERSHIP, t/a TRUMP'S CASTLE HOTEL AND CASINO, Respondent.	Civil Action STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Peter N. Perretti, Jr., Attorney

General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and Joseph A. Fusco, Esquire, and Brian D. Spector, Esquire, of Ribis, Graham, Verdon & Curtin, and Robert M. Pickus, Esquire, Attorneys for Respondent, Trump's Castle Associates, and all matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

1. Respondent Trump's Castle Associates Limited Partnership (hereinafter "Trump's Castle") is a New Jersey limited partnership organized under the laws of the State of New Jersey on May 24, 1985 by Donald J. Trump and what is now known as Trump's Castle Hotel & Casino, Inc. Since the time of its organization and at all times referenced herein, Trump's Castle has had its principal place of business located at Huron Avenue and Brigantine Boulevard in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Trump's Castle is the holder of a plenary casino license issued to it by the Commission authorizing it to operate a casino hotel in accordance with the Casino Control Act and the regulations promulgated thereunder. Said license was issued to Trump's Castle effective June 14, 1985, and last renewed on April 27, 1988, and Trump's Castle has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Trump's Castle is the holder of, and operates pursuant to, a Certificate of Operation effective June 19, 1985 and Trump's

Castle has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles Trump's Castle to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. On September 11, 1987, the Credit Department at Trump's Castle commenced gathering information regarding Richard Hartman for the purpose of processing a casino credit application for Mr. Hartman.

5. The information gathering process regarding Richard Hartman that commenced on September 11, 1987, was initiated by Trump's Castle Director of Player Development Howard Moskovitz who had been advised by a representative of Harrah's Marina Hotel and Casino (hereinafter "Harrah's Marina") that Mr. Hartman desired to attend a show at Trump's Castle on September 12, 1987. On September 11, 1987, Mr. Moskovitz provided the patrons's name, Richard Hartman, and an address, 252-00 Horace Harding Expressway, Little Neck, New York, to the Credit Department so that the credit verification process could begin.

6. On September 12, 1987, Richard Hartman attended a show at Trump's Castle and, at or about 8:25 p.m., he went to the Credit Department area adjacent to the casino cage in order to complete an application for casino credit. Following the completion of a credit application form by Credit Clerk Anthony Duda, Mr. Hartman was granted a casino credit line in the amount of $500,000. The

Trump's Castle representatives who approved Mr. Hartman's $500,000 credit line were Stanley Pienta, Director of Casino Credit, Willard "Bucky" Howard, formerly Vice President of Casino Operations, and Ivana Trump, formerly Chief Executive Officer. A copy of the credit application form that reflects the approval of a $500,000 casino credit line for Mr. Hartman on September 12, 1987, is attached hereto as Exhibit 1.

7. Prior to the approval of Richard Hartman's credit application as described in paragraph 6, supra, the Credit Department at Trump's Castle obtained information from various sources regarding Mr. Hartman's casino credit history, consumer credit history, and bank checking account. Paragraphs 8 through 19 of this Stipulation and the exhibits referenced therein, infra, describe the information obtained by Trump's Castle relative to Mr. Hartman including the date and time of its receipt.

8. On September 11, 1987, at approximately 4:00 p.m., Trump's Castle credit clerk Alberta Zarozny obtained a "Central Credit Gaming Report" from Central Credit of Las Vegas (hereinafter "CCLV"), a recognized casino credit bureau. The information contained on the "Central Credit Gaming Report" related to Richard Hartman's prior casino credit and front money history at eight (8) New Jersey casinos. Additionally, the Central Credit Gaming Report disclosed certain bank information of Richard Hartman. A copy of the September 11, 1987, Central Credit Gaming Report of CCLV is attached hereto as Exhibit 2.

9. The Central Credit Gaming Report disclosed that, commencing in or about September 1980, Richard Hartman established casino credit and front money accounts at various Atlantic City casinos. A summary of the report, disclosed the following:

Caesars -	Credit established 9/28/80; no credit as of inquiry on 2/21/87; $200,000 payment stopped, 1/28/84; write-off 12/1/84, $60,000; balance 9/7/87, $60,000.
Bally's Park Place -	Credit established 8/23/81; high action 9/10/83, $667,500; last action 10/10/83, $100,000; $100,000 account closed, 2/13/84; settled 10/6/84; paid 2/21/86; $15,000 write-off, 8/6/87; balance 9/6/87, $15,000.
Atlantis -	Front money established 3/12/82, inactive, 8/6/87; no account 3/27/87.
Sands -	Credit established 9/11/82; current limit $200,000 as of 8/17/87; $200,000 payment stopped, 1/24/84; paid 2/26/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
GNAC -	Credit established 3/2/83; high and last action, 8/29/83, $100,000; $100,000 payment stopped 1/15/84; paid 2/19/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Resorts -	Credit established 4/12/83; no credit as of 8/27/87; $200,000 payment stopped 2/27/84; $130,000 write-off, 9/28/84; paid clear 9/7/87.
Marina -	Account established 4/6/84; $300,000 credit limit as of inquiry on 8/31/87, high and last action 8/25/87, $300,000, per CCLV inquiry 9/7/87 no information released because patron "preferred."
Trump Plaza -	Account established 12/9/86; current $1,000,000 limit; high and last action 9/7/87, $500,000; current balance $500,000 from 9/7/87.

10. The Central Credit Gaming Report obtained from CCLV on September 11, 1987, also contained bank information regarding Richard Hartman. Said report disclosed the following information regarding Richard Hartman's bank account #1010000676 at Irving Trust:

Type of account - Business regular

Average balance - medium 5, low 6

Current balance - not available

Age of account - opened 6 years

Excellent Customer

11. On September 11, 1987, between 4:00 p.m. and 4:30 p.m., Trump's Castle credit clerk Alberta Zarozny obtained casino credit information regarding Richard Hartman by direct telephone contact with four (4) other casinos in Atlantic City. The casinos contacted by credit clerk Zarozny and the information obtained was as follows:

Atlantic City Casino	Information Obtained And Recorded
Bally's	Credit Suspended; $15,000 write-off 8/6/87, current owing $15,000.
GNAC	Credit Suspended; $100,000 write-off 8/29/83.
Caesars	Credit Suspended; $60,000 write-off 12/1/84.
Resorts	Credit Suspended; $130,000 write-off 12/28/84, current owing zero.

The above information was recorded by credit clerk Zarozny on a form titled "Casino Credit Verification." A copy of the "Casino

Credit Verification" form which reflects the September 11, 1987, direct telephone contacts is attached hereto as Exhibit 3.

12. On September 11, 1987, at approximately 4:30 p.m., Trump's Castle credit clerk Alberta Zarozny obtained information regarding Richard Hartman's non-casino indebtedness by contacting a recognized consumer credit bureau, Credit Bureau Incorporated (hereinafter "CBI"). A printed credit report regarding Richard Hartman was obtained via electronic transmission. The CBI credit report indicated a zero balance on a Diners Club account and a judgment, dated September 1984, in the amount of $1,615 having been entered against Richard Hartman in a suit involving the New York City Department of Finance. The address appearing on the CBI credit report for Richard Hartman was 252-00 Horace Harding Exp., Flushing, New York 11362. A copy of the CBI credit report is attached hereto as Exhibit 4.

13. On September 11, 1987, at 4:30 p.m., Trump's Castle credit clerk Alberta Zarozny completed a "CCB/RAV - Control Log" form. Said form records the consumer credit report verification and the residence address verification for Richard Hartman. Trump's Castle relied on the CBI credit report described in paragraph 12, supra, for both verifications. A copy of the "CCB/RAV - Control Log" is attached hereto as Exhibit 5.

14. On September 11, 1987, at 4:45 p.m., Trump's Castle credit clerk Alberta Zarozny sought to obtain information regarding Richard Hartman's bank account #1010000676 at Irving Trust in New York City by telephonically contacting the bank. Irving Trust

represented to credit clerk Zarozny that it would not release information over the telephone regarding said account. The contact with Irving Trust is recorded on a Trump's Castle form titled "Bank Information." Said form contains the notation "WNR" which indicates "would not release." No record is maintained in Richard Hartman's credit file to indicate that Trump's Castle prepared or forwarded to Irving Trust a confidential credit inquiry letter regarding Mr. Hartman's bank account #1010000676. A copy of the "Bank Information" form that reflects the contact with Irving Trust on September 11, 1987, is attached hereto as Exhibit 6.

15. On September 11, 1987, Trump's Castle credit clerk Alberta Zarozny partially completed a credit application form relative to Richard Hartman. Credit clerk Zarozny recorded the following information:

Credit Application Box	Information Recorded
Name: Last, First	Hartman, Richard
Street Address of Residence	252-00 Horace Harding Exp.
City, State, Zip	Little Neck, NY 11362
Bank #1	Irving Trust Co.
Personal Acct. #	1010000676

The name and address of the patron recorded by credit clerk Zarozny on the credit application form had been obtained from Howard Moskovitz, as described in paragraph 5, supra, and the bank name and account number recorded by credit clerk Zarozny on the credit application form had been obtained from the Central Credit Gaming Report (see Exhibit 2).

16. On September 11, 1987, at 5:52 p.m., Trump's Castle lead credit clerk Patricia Rando obtained information regarding Richard Hartman's non-casino indebtedness by contacting a recognized consumer credit bureau, Credit Bureau Associates (hereinafter "CBA"). A printed credit report regarding Mr. Hartman was obtained via electronic transmission. The CBA credit report indicated a zero balance on a Diners Club account and a judgment, dated September 27, 1984, in the amount of $1,600 having been entered against Richard Hartman in a suit involving the New York City Department of Finance. The address appearing on the CBA credit report for Richard Hartman was 252-00 Horace Harding Exp., Flushing, New York 11362. A copy of the CBA credit report is attached hereto as Exhibit 7.

17. On September 11, 1987, at 6:10 p.m., Trump's Castle lead credit clerk Patricia Rando obtained further information regarding Mr. Hartman's current casino credit limits and outstanding balances by direct telephone contact with Harrah's Marina and Trump Plaza. The information obtained consisted of the following:

Atlantic City Casino	Information Obtained and Recorded
Harrah's Marina	suspended credit account at management's request; front money only; last action August 1987, $500,000; zero outstanding balance.
Trump Plaza	current $1,000,000 credit line, last action September 7, 1987, $500,000; zero outstanding balance.

The above information was recorded by lead credit clerk Rando on the "Casino Credit Verification" form which is marked Exhibit 3.

18. Lead credit clerk Patricia Rando's telephone call to Harrah's Marina on September 11, 1987, described in paragraph 17, supra, also included a request for information regarding Richard Hartman's bank account #1010000676 at Irving Trust. Harrah's Marina provided the following information:

Type of account - Personal

Average balance - medium 6

Date opened - January, 1977

Date information obtained - August 7, 1987

The above information was also recorded on the "Casino Credit Verification" form which is marked Exhibit 3.

19. On September 12, 1987, at 6:45 p.m. and 7:00 p.m., Trump's Castle lead credit clerk Patricia Rando telephonically contacted Trump Plaza and the Sands to obtain current casino credit limits and outstanding balances relative to Richard Hartman's casino credit accounts at those casinos. The information obtained consisted of the following:

Atlantic City Casino	Information Obtained and Recorded
Trump Plaza	Current $1,000,000 credit line, zero outstanding balance.
Sands	Current $400,000 credit line, established August 17, 1987, zero outstanding balance.

The above information was recorded by lead credit clerk Rando on the "Casino Credit Verification" form which is marked Exhibit 3.

20. On September 12, 1987, at or about 8:25 p.m., Richard Hartman arrived at Trump's Castle and went to the Credit Department

area adjacent to the casino cage for the purpose of completing his credit application. Mr. Hartman was seated at a credit executive's desk. Credit clerk Anthony Duda went to the credit executive's desk where Mr. Hartman was seated in order to complete the open items on the credit application form of Mr. Hartman.

21. Credit clerk Anthony Duda completed the open portions of the credit application form regarding Mr. Hartman, which included the following information:

Credit Application Box	Information Recorded
Employment/Firm Name	Richard Hartman
Type of business	Law (attorney)
Position	Owner
# of years in employment	22
Employment address	252-00 Horace Harding Hwy. Little Neck, N.Y.
Income/Source	6 million/business
Assets/Source	1 million/real estate
Other outstanding indebtedness	zero
Other casinos established at	Sands, Plaza

22. On September 12, 1987, at or about 8:30 p.m., credit clerk Anthony Duda examined identification credentials of Richard Hartman and observed Mr. Hartman sign the credit application form. The identification credentials examined consisted of Richard Hartman's New York State driver's license #H01660 22079 125146 40 and his American Express card. Mr. Hartman's New York State driver's license indicated his name, birthdate, physical

description, photograph and address. The address recorded on the driver's license was 2922 Lonni Lane, Merrick, New York 11566, which was confirmed by the Division in the course of its investigation regarding the subject matter of this Stipulation, supra, to be Mr. Hartman's residence address as of September 12, 1987. Credit Clerk Duda did not notice the discrepancy between the address recorded by Credit Clerk Zarozny on Mr. Hartman's credit application form in the box for residence address and the address contained on Mr. Hartman's driver's license. A copy of Richard Hartman's driver's license #H01660 22079 125146 40 is attached hereto as Exhibit 8.

23. On September 12, 1987, at 8:30 p.m., Richard Hartman was granted a casino credit line in the amount of $500,000 at Trump's Castle, as previously described in paragraph 6, supra. Although Richard Hartman was at Trump's Castle on gaming day September 12, 1987, he did not utilize his approved casino credit account at the gaming tables of Trump's Castle until he returned five days later on gaming day September 17, 1987.

24. On gaming day September 17, 1987, at 12:12 a.m., Richard Hartman was issued counter check #1264866 in the amount of $500,000 on his approved casino credit account. Approximately 2 hours later, at 2:19 a.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. Copies of the "redemption copy" of counter check #1264866 and redemption voucher #903978 are attached hereto as Exhibit 9.

25. On gaming day September 18, 1987, at 1:36 a.m., Richard Hartman was issued counter check #1265405 in the amount of $500,000 on his approved casino credit account. Approximately 1 hour later, at 2:30 a.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. Copies of the "redemption copy" of counter check #1265405 and redemption voucher #931257 are attached hereto as Exhibit 10.

26. On gaming day September 19, 1987, at 11:27 a.m., Richard Hartman was issued counter check #1265517 in the amount of $500,000 on his approved casino credit account. Said counter check remained outstanding as of the close of business on gaming day September 19, 1987. A copy of the "redemption copy" of counter check #1265517 is attached hereto as Exhibit 11.

27. Trump's Castle player rating documentation regarding Richard Hartman reflects the actual gaming loss of $373,500 for the period September 17, 1987 to September 19, 1987. A copy of the player history computer printout for Richard Hartman is attached hereto as Exhibit 12.

28. On gaming day September 22, 1987, at or about 9:49 p.m., Richard Hartman presented a certified check to Trump's Castle cage cashier Stanley Wilson. Said certified check was dated September 21, 1987, in the amount of $817,000 and was drawn on account #101-0003209 at the Irving Trust, 233 Broadway, New York, New York. In the upper left hand corner of said check appears handwritten the name "Richard Hartman" below which is handwritten "Special Account #1." In the upper right hand corner of said check appears

handwritten the number "87092109" representing the check number. In the lower left hand corner of said check next to the pre-printed word "FOR" is the handwritten word "transfer." The account number on which the check was drawn, #101-0003209, was also handwritten. The check was made payable to Richard Hartman and signed by Richard Hartman. A copy of certified check #87092109 is attached hereto as Exhibit 13.

29. On gaming day September 22, 1987, at 9:49 p.m., Trump's Castle accepted certified check #87092109 from Richard Hartman. The acceptance of said check was authorized by cage shift supervisor Greg Moore and was processed for the purpose of redeeming outstanding counter check #1265517 in the amount of $500,000 issued on September 19, 1987. The remaining balance of $317,000 was placed on customer deposit for Mr. Hartman. Copies of redemption voucher #932571 and customer deposit voucher #932572 are attached hereto as Exhibit 14.

30. A review of the cash equivalent logs maintained by Trump's Castle discloses that Trump's Castle had never previously accepted a certified check from patron Richard Hartman or from the Irving Trust Company prior to the presentation of the $817,000 certified check on September 22, 1987.

31. Following the acceptance of certified check #87092109 at 9:49 p.m. on gaming day September 22, 1987, Richard Hartman's outstanding casino credit balance was reduced to zero resulting in an available credit balance of $500,000.

32. At 9:55 p.m. on gaming day September 22, 1987, Richard Hartman requested $817,000 in gaming chips at craps table #1008. Mr. Hartman was then issued customer deposit withdrawal #1267548 in the amount of $317,000 and counter check #1267549 in the amount of $500,000 on his approved casino credit account. The customer deposit withdrawal reduced to zero the customer deposit account of Richard Hartman established at 9:49 p.m. on that same gaming day. Copies of the "Counter Check Request" form prepared at craps table #1008, counter check #1267549 and customer deposit withdrawal #1267548 are attached hereto as Exhibit 15.

33. Trump's Castle player rating documentation regarding Richard Hartman reflects the actual gaming loss of $817,000 for gaming day September 22, 1987 (See Exhibit 12).

34. The following gaming day, September 23, 1987, at 10:00 a.m., Trump's Castle cage shift supervisor Sandra Medchill contacted Irving Trust in New York City by telephone to determine the validity of the $817,000 certified check accepted by the casino cage the previous gaming day. Irving Trust verified that said check had in fact been certified for customer Richard Hartman and was a valid instrument. A copy of the verification sheet is attached hereto as Exhibit 16.

35. On September 23, 1987, at 1:15 p.m., the Credit Department at Trump's Castle obtained information by telephone contact with the Sands that, pursuant to management decision, Mr. Hartman's $400,000 credit line was suspended and he would be permitted front money activity only. Said information was recorded

on a "Casino Credit Verification" form by credit clerk supervisor Susan Johnston. A copy of said "Casino Credit Verification" form is attached hereto as Exhibit 17.

36. On gaming day October 7, 1987, Richard Hartman presented to Trump's Castle casino check #2667 issued to Mr. Hartman by Trump Plaza in the amount of $500,000 and dated October 7, 1987. Said casino check was accepted by Trump's Castle for the redemption of outstanding counter check #1267549 in the amount of $500,000 which had previously been issued to Richard Hartman on gaming day September 22, 1987. A copy of redemption voucher #936644 is attached hereto as Exhibit 18.

37. On October 8, 1987, at 10:00 a.m., the Credit Department at Trump's Castle obtained information by telephone contact with the Sands that Richard Hartman's $400,000 outstanding balance at the Sands was reduced to zero. Said information was recorded on the "Casino Credit Verification" form that is attached hereto as Exhibit 17.

38. On gaming day October 10, 1987, at 7:23 p.m., Richard Hartman was issued counter check #1275821 in the amount of $500,000 on his approved casino credit account. Approximately 30 minutes later, at 7:51 p.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. Copies of the "redemption copy" of counter check #1275821 and redemption voucher #937572 are attached hereto as Exhibit 19.

39. On gaming day October 11, 1987, at 9:42 p.m., Richard Hartman was issued counter check #1277043 in the amount of $500,000

on his approved casino credit account. Approximately 1 hour later, at 10:31 p.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. Copies of the "redemption copy" of counter check #1277043 and redemption voucher #938330 are attached hereto as Exhibit 20.

40. On gaming day October 12, 1987, at 11:25 a.m., Richard Hartman was issued counter check #1277233 in the amount of $500,000 on his approved casino credit account. Approximately 40 minutes later, at 12:04 p.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. Copies of the "redemption copy" of counter check #1277233 and redemption voucher #938491 are attached hereto as Exhibit 21.

41. On gaming day October 12, 1987, at 3:31 a.m., Richard Hartman was issued counter check #1277584 in the amount of $500,000 on his approved casino credit account. Said counter check remained outstanding as of the close of business on gaming day October 12, 1987. A copy of the "redemption copy" of counter check #1277584 is attached hereto as Exhibit 22.

42. Trump's Castle player rating documentation regarding Richard Hartman reflects the actual gaming loss of $475,000 for the period October 10, 1987 to October 12, 1987. A copy of the player history computer printout for Richard Hartman is attached hereto as Exhibit 23.

43. On gaming day October 17, 1987, at 4:42 p.m., Richard Hartman requested that Trump's Castle increase his approved casino credit line from $500,000 to $1,000,000. A "Request for Limit

Increase" form was signed by Mr. Hartman and retained in his credit file at Trump's Castle. A copy of the "Request for Limit Increase" form is attached hereto as Exhibit 24.

44. At the time of Richard Hartman's request for an increase in his approved casino credit line on October 17, 1987, Richard Hartman had an outstanding balance of $500,000 owing to Trump's Castle on his approved casino credit account. Said outstanding balance emanated from the issuance of counter check #1277584 to Mr. Hartman in the amount of $500,000 at 3:31 a.m. on gaming day October 12, 1987.

45. Prior to making a decision on Richard Hartman's request to increase his credit limit to $1,000,000 on October 17, 1987, Trump's Castle credit clerk supervisor Susan Johnston obtained information regarding Mr. Hartman's outstanding casino credit balances at Trump Plaza and Resorts by direct telephone contact. At 10:20 a.m. on October 17, 1987, Trump's Castle obtained the following information relative to Richard Hartman:

Atlantic City Casino	Information Obtained & Recorded
Trump Plaza	Current owing - $1,000,000
Resorts	Current owing - $500,000 from 10/12/87

The above information was recorded by credit clerk supervisor Johnston on a "Casino Credit Verification" form which is attached hereto as Exhibit 25. No updated information was obtained by Trump's Castle on October 17, 1987, regarding Richard Hartman's current casino credit limits.

46. Prior to making a decision on Richard Hartman's request for an increase in his approved casino credit line at Trump's Castle on October 17, 1987, Richard Hartman promised representatives of Trump's Castle that he would tender a personal check in the amount of $500,000 to Trump's Castle on October 21, 1987 for immediate deposit.

47. Director of Casino Credit Stanley Pienta represented in a sworn investigative interview conducted on April 12, 1988, that former Chief Executive Officer Ivana Trump indicated to him on October 17, 1987, that she would approve Mr. Hartman's requested credit limit increase based on the fact that Mr. Hartman would tender payment on the existing outstanding balance of $500,000 with a personal check for immediate deposit by October 21, 1987, as described in paragraph 46, supra. The promise of Richard Hartman to tender payment of $500,000 by October 21, 1987 was recorded in Mr. Hartman's credit file by Director of Casino Credit Stanley Pienta along with the notation "all rpts (reports) curr (current) & ratings support inc. (increase)" (See Exhibit #1).

48. Following approval of the $500,000 credit limit increase, which raised Richard Hartman's approved casino credit limit to $1,000,000, Trump's Castle issued counter check #1279741 in the amount of $500,000 to Richard Hartman at 4:55 p.m. on October 17, 1987. Said counter check remained outstanding as of the close of business on gaming day October 17, 1987. A copy of the "redemption copy" of counter check #1279741 is attached hereto as Exhibit 26.

49. Trump's Castle player rating documentation regarding Richard Hartman reflects the actual gaming loss of $541,250 for gaming day October 17, 1987 (See Exhibit 22).

50. On October 20, 1987, at 4:00 p.m., Trump's Castle contacted National Cred-A-Check (hereinafter "NCC") to obtain information regarding Richard Hartman's bank account #1010000676 at Irving Bank. The information obtained by Trump's Castle from NCC was recorded on the "Bank Information" form that is attached hereto as Exhibit 6.

51. Richard Hartman did not tender a personal check in the amount of $500,000 to Trump's Castle on October 21, 1987, or on any date subsequent thereto.

52. On gaming day October 22, 1987, at 10:00 a.m., Director of Casino Credit Stanley Pienta suspended the casino credit account of Richard Hartman at Trump's Castle (See Exhibit 1).

53. Counter checks #1277584 and #1279741, each in the amount of $500,000 as described in paragraphs 41 and 48, supra, were held by Trump's Castle Casino Cage Department until deposited on or about February 16, 1988 into the depository bank account of Trump's Castle.

54. Counter checks #1277584 and #1279741, each in the amount of $500,000 as described in paragraphs 41 and 48, supra, were returned to Trump's Castle on or about February 24, 1988 for the stated reason that a stop payment order had been issued on said counter checks. A copy of Trump's Castle Returned Check Log and the returned counter checks are attached hereto as Exhibit 27.

55. The returned check balance in the amount of $1,000,000 on the casino credit account of Richard Hartman at Trump's Castle remains unpaid.

56. As part of the Division's investigation in the instant matter, sworn investigative interviews were conducted of credit clerks Alberta Zarozny and Anthony Duda, lead credit clerk Patricia Rando, and Director of Casino Credit Stanley Pienta. Copies of the transcripts of said interviews are attached hereto as Exhibits 28 through 31, respectively. Additionally, two exhibits were utilized at the sworn investigative interviews and are attached hereto as Exhibit 32 (DGE #1 at sworn investigative interview) and Exhibit 33 (DGE #2 at sworn investigative interview).

SETTLEMENT

WHEREAS, the parties have endeavored to submit to the Office of Administrative Law and the Casino Control Commission a detailed submission of all material and relevant facts pertinent to the allegations contained in Division Complaint No. 88-385. Additionally, the parties submit for purposes of this Stipulation of Facts and Settlement Agreement various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, with respect to Counts I and II of Division Complaint No. 88-385, Respondent admits the following violations with respect to its September 12, 1987 decision to approve a $500,000 credit limit for Richard Hartman:

(1) Respondent did not obtain from Mr. Hartman, as opposed to other sources, verify and record in his credit file, his residence address, in violation of N.J.A.C. 19:45-1.27(a)2 and (c)1;

(2) Respondent did not adequately verify and record in his credit file the type, balances, date opened and signatory of his checking account, and the name and title of the person supplying the bank information, in violation of N.J.A.C. 19:45-1.27(c)4 i,iii,iv,v,vi, and vii;

(3) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit, in violation of N.J.A.C. 19:45-1.27(f)1 and 2; and

(4) Respondent did not adequately record in his credit file the reasons credit was approved in light of his 1984 casino credit problems, in violation of N.J.A.C. 19:45-1.27(f)3.

WHEREAS, with respect to Count III of Division Complaint No. 88-385, Respondent admits that its acceptance from Mr. Hartman during non-banking hours on September 22, 1987 of a check signed by and payable to him and certified by the Irving Trust Company without having first verified directly with Irving Trust Company, violated N.J.A.C. 19:45-1.25(e) by virtue of the specific factors set forth below:

(1) The $817,000 amount of the check;

(2) The fact that the number of the account against which it was drawn was handwritten rather than printed thereon;

(3) His approved credit limits and outstanding credit balances with Respondent and other New Jersey casino licensees;

(4) Its not having previously accepted any check certified by the Irving Trust Company or any certified check from Mr. Hartman; and

(5) His 1984 casino credit problems.

WHEREAS, with respect to Counts IV and V of Division Complaint No. 88-385, Respondent admits that its October 17, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000

violated N.J.A.C. 19:45-1.27(a) by virtue of such increase not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent did not adequately record in Mr. Hartman's credit file all available current casino credit limits on October 17, 1987, in violation of N.J.A.C. 19:45-1.27(g)2;

(2) Respondent did not adequately record in Mr. Hartman's credit file the reasons the increase was approved in violation of N.J.A.C. 19:45-1.27(f)3, in light of:

(a) The initial deficiencies in its decision to extend credit as set forth above with respect to Counts I and II;

(b) Mr. Hartman's then outstanding credit balances at other Atlantic City casinos; and

(c) Mr. Hartman's gaming losses at Respondent's casino during the period between the initial extension of credit and the approval of the increase.

WHEREAS, the parties hereby stipulate and agree that the stipulations and agreements contained herein are for purposes of this action only and are entered into as a full and final settlement of all matters and issues raised by Division Complaint No. 88-385.

WHEREAS, the parties hereby stipulate and agree that the validity and enforceability of counterchecks 1277584 and 1279741 under N.J.S.A. 5:12-101 is not an issue addressed in this action and Respondent does not waive its rights with respect to this issue in a separate proceeding.

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

A. Respondent Trump's Castle Associates agrees to pay the sum of fifty thousand dollars ($50,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a)2, 1.27(c)1, 1.27(c)4, and 1.27(f) relative to Counts I and II of Division Complaint No. 88-385.

B. Respondent Trump's Castle Associates agrees to pay the sum of twenty thousand dollars ($20,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violation of N.J.A.C. 19:45-1.25(e) relative to Count III of Division Complaint No. 88-385.

C. Respondent Trump's Castle Associates agrees to pay the sum of seventy thousand dollars ($70,000) to the New Jersey Casino Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a), 1.27(f)3, and 1.27(g)2 relative to Counts IV and V of Division Complaint No. 88-385.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations set forth in Division Complaint No. 88-385.

Kevin F. O'Toole

Kevin F. O'Toole, Esquire
Deputy Attorney General
Attorney for Complainant
State of New Jersey,
Department of Law & Public
Safety, Division of Gaming
Enforcement

4/10/89

Joseph A. Fusco, Esquire
Ribis, Graham, Verdon
& Curtin
Attorney for Respondent
Trump's Castle Associates

4/10/89

Robert M. Pickus, Esquire
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032389/11D

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-106
ORDER NO.: 89-14-21-B
OAL DOCKET NO. CCC 175-89
(ON REMAND CCC 8474-87)

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

Complainant,

v.

TRUMP PLAZA CASINO HOTEL,

Respondent.

ORDER

A Stipulation of Settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the Stipulation of Settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 29, 1989, and April 5, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Trump Plaza Casino Hotel (Trump) pay a civil penalty of $728.75 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, pursuant to the Stipulation of Settlement, Trump contribute a sum not less than $6,558.75 to the Atlantic Mental Health Center, Inc.; and

IT IS FURTHER ORDERED that a letter of reprimand be issued to Trump for violating N.J.S.A. 5:12-119(b).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 175-89

(On Remand CCC 8474-87)

AGENCY DKT. NO. 88-106

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

Petitioner,

v.

TRUMP PLAZA ASSOCIATES,

Respondent.

Katherine A. Smith and Mitchell A. Schwefel, Deputy Attorneys General, for the petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

Nicholas F. Moles, Esq., Vice-President, General Counsel and **Warren O. Stillwell,** Esq. for the respondent, Trump Plaza Associates (Ribis, Graham, Verdon & Curtin, attorneys)

Record Closed: January 31, 1989 Decided: February 15, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates the Trump Plaza Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on November 7, 1986, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Trump Plaza Associates (Trump) filed an Answer to the complaint on November 16, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honroable Richard Voliva. The matter was originally scheduled for hearing on June 29, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 20, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 12, 1988. The record closed on July 15, 1988.

The matter was remanded to the OAL for further proceeding by order of the Commission on November 3, 1988. On January 3, 1989, the parties submitted another proposed settlement agreement. The record closed on January 31, 1989, upon receipt of the remanded files.

FINDINGS OF FACT

The Division and Trump have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidence by their execution of the settlement agreement.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSION OF LAW AND ORDER OF DISPOSITION

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

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

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

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

DATE — **STEPHEN W. THOMPSON**, ALJ

Receipt Acknowledged:

DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

DATE FEB 21 1990 — OFFICE OF ADMINISTRATIVE LAW

lar

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Attorneys for Respondent,
Trump Plaza Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-106
OAL DOCKET NO.: CCC-08474-87

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

Complainant,)

vs.)

TRUMP PLAZA ASSOCIATES,)

Respondent.)

STIPULATION OF
FACTS AND SETTLEMENT

The matters in the above-captioned matter having been discussed by and among the parties involved, Donald R. Belsole, Acting Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Assistant Attorney General, and Warren O. Stilwell, Esquire, and Nicholas F. Moles, Esquire, Attorneys for Respondent, Trump Plaza Associates, and said factual matters having been agreed upon, it is hereby stipulated to and agreed by and among the parties as follows for the purpose of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement, now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., (hereinafter "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Trump Plaza Associates (hereinafter called "TPA"), is now and at all times referenced herein has been a general partnership, organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at the Boardwalk and Mississippi Avenue in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. TPA is and was at all times material hereto the holder of a casino license issued by the Commission authorizing TPA to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to TPA, formerly known as Harrah's Associates effective on May 24, 1984. TPA has been conducting its casino hotel operations pursuant to said license at all times referenced herein.

4. TPA is and was at all times material hereto the holder of and operates pursuant to a Certificate of Operation effective May 11, 1984. Said Certificate of Operation entitles TPA to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. On November 7, 1986, Debra Kim Cohen entered TPA's casino room and gambled for approximately four (4) hours at Blackjack Tables 56 and 58 in Pit 10. During this four (4) hour period, TPA casino floor personnel observed Debra Kim Cohen playing blackjack and rated her blackjack play. At the time and place aforesaid, the said Debra Kim Cohen was a minor, seventeen (17) years of age. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B are true and correct copies of two (2) TPA rating slips, each dated November 7, 1986, for Debra Kim Cohen, a/k/a Kim Cohen.

6. Leonard Cohen stated in his sworn statement to the Division taken on June 26, 1986, that he orally informed an employee of the Security Department at all of the Atlantic City casinos that, among other things, his daughter was a minor and should not be allowed to gamble in the casino; and in an unsworn statement to the Division, Mr. Cohen stated that Trump Plaza was among the casinos he orally notified, although he was unable to recall the identity or position of the individual employee to whom he spoke.

7. By letter, dated November 25, 1986, TPA's Legal Department was notified by Richard Press, Esquire, attorney for Debra Kim Cohen, that Debra Kim Cohen was a minor who had gambled at Trump Plaza and enclosed a copy of a photograph of Debra Kim Cohen. This notice occurred subsequent to the incident referred to in Paragraph 5, supra. Further, TPA took immediate action to notify its Surveillance, Security, Credit and Games personnel of said letter from Mr. Press. No further acts of Debra Kim Cohen entering the casino room at TPA or engaging in gaming activity at TPA occurred after November 7, 1986, the date referred to in Paragraph 5, supra. Attached hereto and made a part hereof as Exhibit C is a copy of said November 25, 1986, letter from Mr. Press to TPA.

8. N.J.S.A. 5:12-119b was effective at all times referenced herein and provides in pertinent part:

> Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino room is a disorderly person...

9. By permitting the minor, Debra Kim Cohen, to enter its casino and allowing her to remain and gamble therein on November 7, 1986, as set forth more fully herein, Respondent TPA violated N.J.S.A. 5:12-119b.

10. Attached hereto and made a part hereof as Exhibit D, but not stipulated to by the Complainant, is a Certification of Philip DeNicola, Director of Security of Trump Plaza Hotel and Casino.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that the Commission may impose a letter of reprimand or censure against Respondent TPA, which letter of reprimand or censure shall be made a permanent part of the file of Respondent TPA, if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

2. The parties further agree that the Commission may impose a civil penalty of up to $7,287.50 (seven thousand two hundred eighty-seven dollars and fifty cents), against Respondent TPA if, in its discretion, the Commission deems such action appropriate in accordance with N.J.S.A. 5:12-129 and 130;

3. The parties further agree that to the extent that any civil penalty imposed by the Commission against Respondent TPA is less than $7,287.50 (seven thousand two hundred eighty-seven dollars and fifty cents), Respondent TPA shall contribute the difference between $7,287.50 (seven thousand two hundred eighty-seven dollars and fifty cents) and the amount of any civil penalty

to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

4. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. This Stipulation of Facts and Settlement shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation and Facts and Settlement.

Respectfully submitted,

DONALD R. BELSOLE
ACTING ATTORNEY GENERAL OF NEW JERSEY

Dated: Dec 14, 1988

By: Mitchell C. Schwefel
Mitchell A. Schwefel
Assistant Attorney General
Attorney for Respondent
Trump Plaza Associates

RIBIS, GRAHAM, VERDON & CURTIN

Dated: 12/15/88

By: Warren O. Stilwell
Warren O. Stilwell, Esquire

Dated: December 14, 1988

By:
Nicholas P. Moles, Esquire

120288/6

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-174
OAL DOCKET NO. CCC 5064-87
(ON REMAND CCC 7916-86)
REGISTRATION NO. 11514-40
ORDER NO. 88-7-18

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. FRANCISCO VALDESPINO, Respondent.	ORDER

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

IT IS on this 22nd day of June 1989, ORDERED that the initial decision be modified in the particulars and for the reasons stated in the Final Commission Decision dated April 21, 1988; and

IT IS FURTHER ORDERED that the casino hotel employee registration of Francisco Valdespino is revoked based on the reasons stated in the Final Commission Decision, which is incorporated herein by reference; and

ORDER NO. 88-7-18

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5064-87
(ON REMAND CCC 7916-86)
AGENCY DKT. NO. 87-174

DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
FRANCISCO VALDESPINO,
Respondent.

Joanne C. Ciancimino, Deputy Attorney General, for the petitioner (Cary Edwards, Attorney General of New Jersey, attorney)

Angelina Montanez, Esq., for the respondent (Montanez & Montanez, attorneys)

Record Closed: November 16, 1987 Decided: December 10, 1987

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on October 28, 1986, seeking the revocation of the respondent's registration as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter (OAL DKT. CCC 7916-86) was transmitted to the Office of Administrative Law on November 20, 1986, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on January 13, 1987, before Administrative Law Judge Lillard E. Law, and a prehearing order was issued on January 14, 1987. The matter was then transferred to Administrative Law Judge Edgar R. Holmes. On the date set for the hearing, April 27, 1987, the respondent failed to appear. After the respondent also failed to respond to a letter requesting an explanation for his nonappearance, Judge Holmes issued an initial decision on June 9, 1987, in which he concluded that the respondent had abandoned his request for a hearing. Upon review, the Commission determined that the respondent had presented an explanation for his nonappearance, and on July 15, 1987, ordered that the matter be remanded to the Office of Administrative Law.

The remanded matter (OAL DKT. CCC 5064-87) was received by the Office of Administrative Law on July 22, 1987. Administrative Law Judge Stephen W. Thompson conducted a prehearing conference on September 18, 1987, and issued a prehearing order on September 23, 1987. Thereafter, the matter was transferred to the undersigned for purposes of conducting the hearing and rendering an initial decision.

The hearing took place on November 16, 1987, at the courtroom in the Ventnor City Hall, Ventnor, New Jersey, and the record in the matter closed on that date.

At the hearing, it was established that the respondent does not speak English, and his friend and landlord, Oscar Calen, acted as an interpreter.

FINDINGS OF FACT

On March 10, 1986, the respondent sold approximately three grams of cocaine to a person for $250 at the Florida Pub in Atlantic City (P-1). Thereafter, he was arrested (P-2) and indicted for the distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19a(1); possession of a controlled dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19a(1); and possession of a controlled dangerous substance, a violation of N.J.S.A. 24:21-20a(1) (P-3). The respondent, who was represented by a public defender, entered a guilty plea to the charge of distribution of a controlled dangerous substance, and the rest of the charges were dismissed. For the offense, the respondent was confined in the Atlantic County Jail for a period of 43 days and was placed on probation for a period of 18 months (P-3).

The respondent completed his period of probation several months before the hearing in this matter. The Atlantic County Probation Department submitted letters indicating that the respondent was very cooperative in complying with the terms of his probation and that his probation period was terminated early (R-1, R-2). The respondent has not been convicted of any other criminal offenses either before or after the 1986 incident.

At the time of his arrest, the respondent was working as a utility person for the Trump Plaza Hotel and Casino. His employment was terminated since his casino hotel employee registration was suspended by the Commission on November 6, 1986. On behalf of the respondent, Dennis Jerauld, assistant executive steward for Trump Plaza Hotel and Casino, wrote a letter, dated October 19, 1987, in which he stated that the respondent had been employed as a kitchen utility person from August 23, 1984 through November 5, 1986, and that his performance was acceptable (R-5).

After his release from jail, the respondent was unable to work for a while because of a hernia operation. Thereafter, the respondent obtained his current job in the housekeeping department of Ocean One, a shopping center. On behalf of the respondent, Frank Ganbale, the housekeeping manager, and David Greenfield, the day supervisor, at Ocean One, jointly submitted a letter, dated November 2, 1987, in which they stated that the respondent has been a very dependable employee who does excellent work and needs very little supervision (R-4).

Also by letter, Vincent Alegret, general manager of Carnegie Delicatessen of Secaucus, stated that the respondent had worked for him as a kitchen utility person in New York City at the Waldorf Astoria Hotel from 1974 thorough 1979, and at Resorts International Casino Hotel in Atlantic City from 1980 through 1982, and that the respondent was courteous, friendly and a good worker (R-3). According to Mr. Alegret, he is aware of the respondent's conviction and he would not hesitate to give him a job at the Carnegie-Delicatessen in Secaucus, New Jersey, if the respondent were willing to relocate (R-3).

Oscar Calen testified that he has known the respondent for six years and that he was surprised when he learned of his arrest, since he considers the respondent to be a good responsible person who works hard and is always trying to improve himself.

Mr. Calen stated that he sees the respondent every day and that he is a good tenant. Also, Mr. Calen stated that he feels that the respondent made a mistake and that he has been amply punished.

On his own behalf, the respondent admitted that he has used drugs personally, but stated that he sold cocaine on only one occasion. The respondent stated that he was aware that it was illegal to sell drugs and that he now regrets his action, especially because after he was arrested, he had difficulties getting a good job.

I **FIND** that the facts as stated above are not in dispute, except that there is a factual dispute as to the circumstances surrounding the cocaine sale on March 10, 1986.

In her investigation report, New Jersey State Trooper D. Dunne stated that she had been advised by an unidentified person that she could purchase cocaine from the respondent, who only dealt in large quantities of narcotics (a minimum of 1/2 ounce) (P-1). Also in her report, Trooper Dunne, stated that in the Florida Pub she offered the respondent $250 for the purchase of 1/4 ounce of cocaine and that the respondent sold her a plastic bag of a powdery substance, later identified as cocaine (P-1). During the hearing, the respondent admitted that he sold cocaine at the Florida Pub; however, he vehemently denied that he sold it to the undercover policewoman. In addition, the respondent stated that this was the one and only time he sold narcotics, and he denied being a dealer in large quantities of narcotics. Based on my review of the testimony and exhibits, I **FIND** that the respondent sold the cocaine and that it is immaterial if the sale was directly to the undercover police officer or was done in her presence. Further, I **FIND** that there is no credible proof to establish that the respondent was a regular narcotics dealer.

CONCLUSIONS OF LAW

In closing, Deputy Attorney General Joanne C. Ciancimino argued that the Division had established that the respondent was convicted of a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c, and that an insufficient period of time has elapsed since the respondent's conviction and since the conclusion of his probationary period for him to show his rehabilitation by clear and convincing evidence.

Ms. Angelina Montanez, Esq., on behalf of the respondent, stated that the Division has only shown that the respondent sold narcotics on one occasion, and she argued that the respondent had shown his rehabilitation. She noted that the respondent is genuinely sorry for his criminal activity and that he was released early from his probation due to his satisfactory performance. Ms. Montanez argued that the letters from the respondent's former and present employers and supervisors, as well as the testimony of his landlord, establish that the respondent is a responsible person and a good employee.

Based on the facts in this matter, I **CONCLUDE** that the Division has established a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(3), since the Division has showed that the respondent was convicted of the possession of a controlled dangerous substance.

Since the Division has established a statutory disqualifier, it is now necessary to consider whether the respondent has shown rehabilitation by clear and convincing evidence. N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of retaining a casino employee registration:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, 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 registrant under their supervision.

After reviewing the facts in this matter, I agree with Ms. Ciancimino, and I **CONCLUDE** that although some evidence of rehabilitation has been presented by the

respondent, he has not shown, by clear and convincing evidence, his rehabilitation as required by statute.

Therefore, I **ORDER** that the respondent's registration as a casino employee be **REVOKED.**

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

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

DEC 10 1987
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

12-11-87
DATE

Heide M Vandegrift
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 15 1987
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ks

1559

EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:

P-1 New Jersey State Police Investigation Report, dated March 13, 1986; Request for Examination of Evidence, dated March 13, 1986; New Jersey State Police Supplemental Investigation Report, dated March 27, 1986; and Laboratory Report, dated March 21, 1986

P-2 New Jersey State Police Supplemental Investigation Report, dated July 30, 1986

P-3 Indictment No. 86-002517, filed against Francisco Valdespino; Judgment of Conviction and Order for Commitment, signed by Superior Court Judge Manuel Greenberg

FOR THE RESPONDENT:

R-1 Letter from Robert P. Scull of the Atlantic County Probation Department

R-2 Letter from Jim Parent of the Atlantic County Probation Department

R-3 Letter from Vincent Alegret, dated January 12, 1987

R-4 Letter from Frank Ganbale and David Greenfield, dated November 2, 1987

R-5 Letter from Dennis Jerauld, dated October 19, 1987

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Francisco Valdespino
Oscar Calen

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-174
OAL DOCKET NO. CCC 5064-87
(ON REMAND CCC 7916-86)
REGISTRATION NO. 11514-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	FINAL COMMISSION DECISION
FRANCISCO VALDESPINO,	:	
Respondent.	:	

Angelina Montanez, Esq., appeared for Francisco Valdespino. Joanne C. Ciancimino, Deputy Attorney General, appeared for the Division of Gaming Enforcement

This matter arises out of the complaint for revocation and application for suspension of the casino hotel employee registration of Francisco Valdespino (respondent) pursuant to sections 91(b), -109 and -129 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter, the Act)[1] filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on October 28, 1986. The basis for the Division's complaint and application for

1. Sections of the Casino Control Act may be cited throughout this opinion by the section number only, omitting the prefix "N.J.S.A. 5:12-."

suspension was the respondent's conviction on September 9, 1986, for distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)1, a disqualifying offense under N.J.S.A. 5:12-86(c).

On November 6, 1986, the Commission suspended the respondent's casino hotel employee registration for good cause shown, pursuant to N.J.S.A. 5:12-109(a)(1) and (3), pending the final disposition of the complaint or until final order of the Commission. By letter dated November 4, 1986, the respondent requested a hearing and on November 13, 1986, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 5:12-107(a)(1), N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on January 13, 1987. On April 27, 1987, the date set for the hearing, the respondent failed to appear. Thereafter, an initial decision was issued on June 9, 1987, concluding that the respondent had abandoned his request for a hearing. Upon review of that initial decision at the public meeting of July 15, 1987, the Commission determined that the respondent had presented an explanation for his absence and ordered that the matter be remanded to the OAL. A prehearing conference was held and thereafter

the matter proceeded to a formal hearing before an administrative law judge (ALJ) on November 16, 1987.

On December 11, 1987, the ALJ filed an initial decision with the Commission recommending that "the respondent's registration as a casino employee be revoked." A copy of this initial decision is appended as A-1 to A-8. No exceptions nor objections to the initial decision were filed.

The parties addressed the Commission at its public meeting of January 27, 1988, and upon review and consideration of the initial decision and the entire record of the proceedings, we determined at our public meeting, by a vote of 5 - 0, to modify the ALJ's decision to revoke the casino hotel employee registration. Despite our concurrence with the ALJ's recommendation to revoke the registration, we do not adopt the initial decision in its entirety.

We agree with the ALJ that the casino hotel employee registration should be revoked based upon the respondent's commission of an offense which requires his disqualification pursuant to section 86(c). We also affirm the ALJ's conclusion that Mr. Valdespino had failed to demonstrate rehabilitation by clear and convincing evidence as required by section 91(d). However, while listing the rehabilitation criteria of section 91(d), the ALJ did not essay to relate

the facts to the criteria and to elaborate on her reasons for finding an absence of rehabilitation in this case. Therefore, we issue this opinion to set forth more fully our reasons for modifying this initial decision.

ISSUES

The complaint filed by the Division with the Commission alleged that, pursuant to Indictment No. 86-07-1332-B, the respondent was indicted and, on September 9, 1986, convicted of distribution of controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-19(a)1. Based upon this conviction, the Division asserted that the respondent was disqualified pursuant to section 86(c) and that his casino hotel employee registration should be revoked.

The issues established at the prehearing conference conducted at the OAL on September 18, 1987, were memorialized in the prehearing conference order as:

> (1) Whether the respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86(c) to wit: N.J.S.A. 24:21-19(a)(1), Distribution or Sale of Controlled Dangerous Substance (Cocaine).
>
> (2) Whether the respondent may demonstrate rehabilitation pursuant to Section 91(d) of the Casino Control Act.

FACTS

At the OAL hearing conducted on November 16, 1987, the Division submitted into evidence the pertinent state police

investigation reports concerning the events of March 10, 1986, the date of the offense. According to the reports, the respondent sold 3.21 grams of cocaine to Trooper D. Dunne, an undercover officer, for $250 at the Florida Pub in Atlantic City. The respondent, represented by counsel, testified through the assistance of his landlord, who acted as an interpreter. Although the respondent disputed the trooper's version of the underlying circumstances, particularly the identity of the person to whom he made the sale, he did not attempt to deny that he was guilty of the offense for which he had been convicted.

The ALJ quite properly disregarded the respondent's disagreement with Dunne's version by finding that it was not necessary to resolve that issue in view of Valdespino's conviction for distribution of controlled dangerous substance. The judge further found that nothing in this record indicates that the respondent committed such an offense on any other occasion. The record supports these findings. We adopt them.

The rest of the facts in this case are set forth at pages 2-4 of the initial decision. They are correct and incorporated by reference here.

DISCUSSION

Disqualification Under Section 86(c)

The ALJ concluded that the Division had established the respondent was disqualified pursuant to N.J.S.A. 5:12-86(c)(3)[2] due to his conviction for possession of a controlled dangerous substance. The ALJ's misidentification of the offense for which the respondent was convicted was undoubtedly inadvertent because earlier in the initial decision she had found that "the respondent sold the cocaine...." Simple possession of controlled dangerous substance is not an automatic disqualifying offense under the Casino Control Act. Given the existence of the judgment of conviction for distribution of a controlled dangerous substance and the agreement of the parties at the outset of the hearing that the respondent was convicted of the disqualifying offense, we agree that the respondent is disqualified. However, we note that, pursuant to the

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2. Prior to the January 1988 amendments to the Act, N.J.S.A. 5:12-86(c)(3) required disqualification for the conviction of high misdemeanors under N.J.S.A. 24:21-19, the Controlled Dangerous Substance Act, now governed by N.J.S.A. 2C:35-1 et seq. In the amendments to the Act, various drug offenses, including distribution of a CDS which constitutes a crime of the second or third degree, now are enumerated under section 86(c)(1). L. 1987, c. 354 §1, eff. January 4, 1988.

recently-amended provisions of the Act, the applicable provision is section 86(c)(1) rather than former section 86(c)(3).

Rehabilitation

In view of the respondent's conviction on September 8, 1986, the paramount issue in this case is rehabilitation. After reciting the evidence produced by the respondent in support of his claim of rehabilitation, the ALJ recited the factors in N.J.S.A. 5:12-91(d) and stated that she agreed with the Division that insufficient time had elapsed from the date of the offense and the termination of his probation (two months before the OAL hearing) to find rehabilitation on the evidence presented.

A review of the rehabilitation factors of section 91(d) in the context of this case demonstrates that the conclusion reached by the ALJ was correct and, as modified, is affirmed. As to the nature and duties of the registrant's position, the record does not reveal the exact nature of the employment sought. However, at the time of the cocaine sale the respondent was employed as kitchen utility worker at the Trump Plaza Hotel and Casino. That employment began on August 23, 1984, and ended on November 5, 1986, when his registration was suspended by the Commission based on the then-pending drug charges. While his previous position as a

registrant was not, by definition (N.J.S.A. 5:12-8), a sensitive one, his commission of the offense at a time when he enjoyed the benefits of casino hotel employment weighs against him. Moreover, the potential for illicit drug trafficking in any position within a casino hotel is to be studiously avoided.

As to the nature and circumstances of the offense, it requires no extended discussion to conclude that distribution of cocaine is a substantial criminal violation. Indeed, the public policy against the drug trade has been underscored in the recent modification and strengthening of the State's narcotics laws. See N.J.S.A. 2C:35-1 et seq. Distribution of less than 3.5 grams of cocaine constitutes a crime of the third degree, punishable by imprisonment between three and five years, imposition of fines up to $50,000 or both. N.J.S.A. 2C:35-5(b)(3). The laboratory report introduced into evidence showed that the respondent sold 3.21 grams of cocaine.

As to the circumstances under which the offense occurred, there was a dispute at the hearing only as to whether the respondent sold cocaine to a police officer. Thus, regardless of the respondent's awareness of the purchaser's true identity, he admitted selling cocaine to a stranger for $250 in an Atlantic City saloon. There is

nothing to indicate that the transaction was other than it appeared to be, i.e., a profit-motivated narcotics sale. The record is void of any indication that the respondent was overborne by pressures from the police or anyone else to engage in the sale. Indeed, the investigative report filed by the undercover officer, although discounted by the ALJ, indicates that the respondent was approached because he was a reputed dealer and that he took steps to accommodate the officer's request for less than a half-ounce of cocaine.

As to the date of the offense, a crucial factor in rehabilitation, the record shows that the sale occurred on March 10, 1986, approximately one-and-a-half years before the OAL hearing. As stated, the respondent was released from probation in October 1987.

As to the age of the respondent when the offense was committed, the police report shows that he was then 51 years old. Plainly, the respondent was not a callow youth whose actions might more readily be understood as the product of immaturity. This fact renders respondent's burden of showing a change of heart far more difficult.

As to whether the offense was an isolated or repeated incident, the respondent testified that he had not sold drugs to anyone else during his ten years in this country. While the circumstances of the sale (i.e., a distribution

for cash to a stranger in a bar), render the respondent's assertion dubious, there was no proof of any other offense and the ALJ so found.

As to any social conditions that might have contributed to the offense, the respondent failed to offer any mitigating circumstances. As noted above, he does not contend that he was pressured by the police into making the sale. To the contrary, he maintains that he did not know he sold cocaine to a police officer. He does not point to any unusual or overbearing circumstances in his life at that time. He was then employed at Trump Plaza Hotel and Casino and although his position surely did not pay handsomely, he does not claim any extraordinary monetary needs. While he admitted to previously using cocaine, he did not claim any addiction. Rather, he stated that he simply stopped his cocaine use while he was incarcerated after this offense without the need for any rehabilitation program. Thus, the seriousness of the offense is not shown to be diluted by any extant social conditions.

As to the final factor, evidence of rehabilitation, the respondent acknowledged his commission of the offense and expressed his remorse because he was having difficulty obtaining employment. He produced letters from his

probation officer to the effect that the respondent had been cooperative and had complied with all the terms of probation, which was terminated approximately six months early. Another letter, from his former supervisor in several food service positions from 1974 to 1984, related that the respondent was "courteous and friendly" and "a good worker" also often working beyond his regular hours and usual duties. His former supervisor, who is now operating a delicatessen in Secaucus, indicated he would not hesitate to rehire the respondent despite his "problem." A letter from Trump Plaza Hotel and Casino stated that the respondent had performed at an acceptable level during his employment there. Finally, a letter from his current employer, Ocean One Mall, asserted that the respondent is a "very dependable employee" who takes pride in his work and is well-liked by his co-workers. In addition, the respondent's landlord, Oscar Calen, who also was permitted to serve as his interpreter,[3] testified that he has known the respondent for six years, that the respondent has continuously sought

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3. The wisdom and propriety of allowing respondent's witness to serve as an interpreter was not addressed by the parties or the ALJ on the record. We therefore shall not discuss it further, but our silence should not be taken as approval of the practice.

employment after his arrest and that the respondent is a moral person who "lives clean." Mr. Calen's opinion was not changed by the respondent's conviction. The respondent has not attended any drug rehabilitation programs nor taken any steps to demonstrate his reform.

Balancing the weighty negative factors in their entirety against the meager evidence of rehabilitation, the scale tips decidedly against the respondent. The lapse of so short a period of time from the commission of a serious, profit-motivated drug distribution offense, together with the respondent's age and the absence of any mitigating circumstances, overwhelm the testimony of his landlord and his former supervisors that he was a dependable and hard worker. Therefore, with these modifications to amplify the reasons, the Commission adopts the ALJ's finding that the respondent has not affirmatively established his rehabilitation pursuant to section 91(d).

CONCLUSION

For the reasons set forth, the Commission:

(1) affirms the ALJ's finding that respondent committed the per se disqualifying offense of distribution of cocaine;

(2) modifies the initial decision to reject the ALJ's erroneous

statement at p. 5 of the initial decision that the respondent's disqualification is based upon a conviction for possession of a controlled dangerous substance; and

(3) with the foregoing modifications to amplify the reasons, adopts the ALJ's conclusion that rehabilitation has not been demonstrated by clear and convincing evidence.

Accordingly, the casino hotel employee registration of Francisco Valdespino is revoked.

By: _____
Walter N. Read, Chair

_____
W. David Waters, Vice Chair

_____
E. Kenneth Burdge, Commissioner

_____
Valerie H. Armstrong, Commissioner

_____
Carl Zeitz, Commissioner

DATE: April 21, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-170; 88-32
REGISTRATION NO. 60255-40
APPLICATION NO. 69181-21
OAL DOCKET NO. CCC 4054-88
ORDER NO. 89-2-5

APPLICATION OF NESTOR L. VEGA FOR A CASINO EMPLOYEE LICENSE AND STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. NESTOR L. VEGA, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989,

IT IS on this 30th day of January 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Nestor L. Vega's application for licensure as a casino employee is denied substantially

ORDER NO. 89-2-5

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 casino hotel employee registration held by Nestor L. Vega is revoked substantially for the reasons stated in the initial decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4054-88
AGENCY DKT. NO. 88-32
and 88-EA-170

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
NESTOR L. VEGA,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner, (W. Cary Edwards, Attorney General of New Jersey, attorney)
Timothy Patrick Maguire, Esq., for respondent

Record Closed: October 4, 1988 Decided: November 9, 1988

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint on August 5, 1987, with the Casino Control Commission (Commission) seeking to revoke the respondent's casino employee registration. On February 5, 1988, the Division filed a letter with the Commission recommending that the Commission deny a casino employee gaming license to the respondent. The gravamen of both petitions is that the respondent was indicted for a violation of N.J.S.A. 2C:20-3, theft in excess of $500, and was subsequently admitted to a pretrial intervention program (PTI). This

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crime is a disqualifier for casino employee licensure and may be a disqualifier for casino employee registration, N.J.S.A. 5:12-86c(1), 90e and 91b. Despite the respondent's entry into a criminal diversion program (PTI), the Division may proceed to prove the underlying facts in order to show that the respondent committed an offense. Under N.J.S.A. 5:12-86g, the Division may show that an applicant committed an offense even if the offense was not prosecuted in this State. Here the criminal case was not prosecuted but diverted from criminal prosecution.

The respondent requested a hearing and the matter was transmitted on June 2, 1988 to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference on July 15, 1988 identified the issues to be resolved at hearing as follows:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C;20-3, theft in the third degree.

B. Whether respondent's continued licensure and/or registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-3, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

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

D. Whether respondent may demonstrate rehabilitation pursuant to section 90h and/or 91d of the Casino Control Act.

The parties convened on October 4, 1988 at which time a plenary hearing was conducted.

FACTUAL DISCUSSION

The respondent Nestor L. Vega was employed as a bellman at Resorts International Casino Hotel on May 4, 1987. On that date he told his friend Jose Merced to take a nylon bag from a luggage cart. The respondent then followed Merced into a men's room where Merced searched the bag for money. The bag contained numerous items. No money was found. Merced took the bag home. A third employee witnessed the search of the bag in the men's room and reported it. The police retrieved the bag from Merced with all the articles intact and returned it to its owner.

The respondent stipulated that he was guilty of theft. He disputes the police report which lists the estimated value placed on the articles as follows:

Nylon Travel Bag	$ 20
Traveling Coffee Pot	20
One pair Jaguar sunglasses	30
Two sets personal keys	no value
Swiss Army Knife	40
Maglite Flashlight	25
Novated Cellular Phone	300
Cinn. (sic) Microwave Radar Detector	400
	$ 835.00

Detective Riggs, who signed the property report, did not identify in any way the method he used to estimate the value of the stolen property.

LEGAL DISCUSSION

The Casino Control Act at section 86 provides that the Commission "shall" disqualify an applicant for licensure who meets certain criteria. Section 86c(1) lists (among others) the crime of theft in the second or third degree as a disqualification criterion. Section 86c(1) is made applicable to employees for gaming licenses and employees who register for employment in casino hotels by sections 90e and 91b. In the case of registrants the revocation or denial is not mandatory but permissible.

Persons who are rehabilitated may be saved from disqualification however, by virtue of sections 90h and 91d. In this case the value of the stolen items acquires significance.

Only third degree theft offenses are included in the disqualification criteria at N.J.S.A. 5:12-86c 1. To be considered a third degree theft, the value of the stolen items must exceed $500.00, N.J.S.A. 2C:20-2b(2)(a). Here, there was no proof that the items had in fact a value of $835.00. There is only the property report in evidence in which a value is placed next to each item stolen. The property report is silent regarding the way the price or values were obtained. Whether Detective Riggs obtained the values of the stolen items from the victim, whether he obtained the values from catalogues or whether he just estimated the values was not disclosed. I can infer however, from the description of the articles that they had some value. *State v. Lopez*, 160 N.J. Super. 30 (App. Div. 1978) pp. 33-35.

I cannot presume that the value of the items exceeded $200., the cut off point in the statute making theft a crime rather than a disorderly persons offense, N.J.S.A. 2C:20-3-2b(3). I therefore **FIND** that the respondent committed the disorderly persons offense of theft and not the third degree offense of theft.

I **CONCLUDE** that the respondent did not commit an act which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c.

RESPONDENT'S EVIDENCE

The respondent testified that he never touched the bag but accompanied his friend because he was curious. He admitted that had there been money in the bag he would probably have shared it with his friend. He acknowledges that he made a mistake and that what he did was "stupid". He was arrested and charged, but was diverted into the pretrial intervention program where he performed 150 hours of community service (50 more than required by his probation officer) with the American Cancer Society. Shortly after the arrest the respondent was terminated and his registration was suspended by the Commission.

Letters in evidence reveal that the respondent immediately obtained employment as a carpenter's helper and has been so employed ever since. His

employer calls him "reliable and proficient." He says he has a "positive attitude in dealing with co-workers." (R-7). The respondent's foreman says that the respondent has been an "EMPLOYEE OF THE MONTH" and that he has "outstanding integrity." (R-6).

The respondent explained two prior police contacts. The first was a shoplifting charge in New York State in 1982. The respondent was found guilty and was fined $100 (the Division's report says $75). His justification for this incident is that he was only in the United States three weeks when arrested. This is no excuse. Stealing is illegal in Puerto Rico as well as the Continental United States.

The second incident involved the charge of promoting gambling. The respondent says he was playing basketball at the school grounds when he stopped to watch some other people gamble. He was arrested and charged. The matter was apparently disposed of on the charge of blocking a passageway. The respondent concealed the shoplifting conviction on his casino personal history disclosure form because he thought it might keep him from being employed.

The respondent is now married. He was single when the bag theft occurred and approximately 26 years old. His wife is pregnant and the respondent appears to be full of his new responsibilities. He claims to be matured and rehabilitated by his marriage and impending fatherhood.

Toni Lee Cox, a lifelong friend of the respondent's in-laws, has known him for six months. She is a casino registrant. She testified that she believed him to be "courteous", "outgoing", "honest and truthful." On cross-examination however, she acknowledged that she might change her opinion of a person who failed to disclose a material fact on his or her application to work in the casino industry. She had not known previous to testifying that respondent had omitted an arrest from his personal history disclosure form.

Mario Vaca has known the respondent for 15 months. He worked with him at "the Castle." He said that the respondent was a "hard worker" and a "good man." He also described him as "honest" and helpful. He said that the respondent and his wife were the only people who visited him when he was sick.

Dick Cox, the father of Toni Lee Cox and a casino licensee, has known the respondent for "about a year-and-a-half." He met him as a consequence of being friendly with the respondent's in-laws. He described him as "a good friend." He said he is always helpful. He described the respondent as "ecstatic" about the upcoming birth of a child. He said the respondent has "honesty" and "integrity" and would be an asset to the casino industry. He knew about the respondent's arrest and his opinion remained unchanged.

Evelyn Mendez has known respondent for approximately "three-and-a-half years." She believes the respondent is truthful and honest despite his arrest. She related an instance of her faith in him. She is Catholic and takes her religion seriously. When it came time to choose a godfather for her baby she chose the respondent. She said he takes his responsibilities seriously and has been a good godparent to her daughter.

Tim Coxson, the respondent's father in law, an air traffic controller, has known the respondent for two years. He testified that the respondent is a good worker in the home (the respondent and his wife reside with them) and a good worker on the job; he goes to work every day. He commented positively on the respondent's honesty and mentioned the pride respondent feels about his new baby.

Patricia Ann Coxson, the respondent's mother-in-law testified. She says that the respondent has only been able to communicate in English for about a year-and-a-half. She says he is not the same person who came to live with them a year-and-a-half ago.

She recalls that he told her of the stolen bag incident because she was his girlfriend's mother. She says he wept when he told her about it. She is satisfied that the respondent will not be involved in deceit again. She said deceit has no place in her family.

She spoke about the respondent's good character. She recalled an instance when a friend of the respondent wanted to go to a building site and obtain some "scrap" lumber. The respondent would not go without permission from the owner of the site. He appreciated the fact that the "scrap" lumber had value to its owner.

She recalled another instance in winter when the respondent helped repair the furnace of a widow and her small son in the neighborhood who were cold.

Mrs. Coxson said that the respondent was repentant.

Josie Vega is the respondent's wife. She commented on the changes in the respondent since their marriage and the pregnancy. She believes he has settled down.

In addition to the letters received from the respondent's employers mentioned above, R6 and R7, the respondent also submitted letters of recommendation from his aunts, Carmen Diaz and Primativo Diaz; his sister Nelsita Vega, and Wesley M. Coxson, his grandfather-in-law. They all speak well of the respondent and recommend him for casino employee licensure.

REHABILITATION AND INIMICALITY

Since I have found that the state has failed to prove the existence of a statutory disqualifier by a preponderance of the credible evidence, "rehabilitation" is no longer a separate issue, but becomes a factor, with others, in the inimicality analysis. *Donna Davis v. Division of Gaming Enforcement*, 8 N.J.A.R. 301 (1986) 308.

In order to facilitate that analysis I shall make the findings required by 90h and 90d (the rehabilitation sections) of the Casino Control Act as follows:

1. The respondent was a bellman in a casino hotel, responsible for assisting guests move their baggage in and out of the hotel. He also seeks licensure as a cleaner and maintenance person on the casino floor (see Division letter of February 5, 1988) and he testified that he has applied for licensure as a craps boxperson. Only as a cleaner and maintenance person will he not have direct continual contact with players and their money or valuables.

2. The conduct complained of is stealing. This is serious. Casino/Hotel patrons are entitled to feel that their belongings are safe with casino hotel employees. They must also be made to feel secure when they gamble.

3. This theft occurred when the respondent was working as a bellman. He should have been the person protecting the bag from thieves, not a conspirator to steal the bag.

4. The theft occurred on May 4, 1987.

5. The theft occurred when the respondent was 26 years old.

6. This was the second time that the respondent has been involved in a theft.

7. There were no social conditions which contributed to this offense.

8. The respondent successfully completed pretrial intervention and did more than he was asked to do by way of community service. He also is highly regarded by his supervisors and family. He is a hard worker. He has matured since he committed the theft.

This theft was committed in May of 1987. A previous theft was committed in November of 1982. It would have appeared that the respondent was rehabilitated from the earlier theft prior to May of 1987. He was successfully employed in the casino hotel industry and he reports that he was so well thought of that he was being considered for promotion to waiter. Then he committed this offense. There was absolutely no excuse for this offense.

The purpose of the rehabilitation statute is to make applicants for licensure and registration affirmatively prove that if employed in the sensitive area of casino gambling or casino hotel services that they can be trusted not to commit an offense while so employed. This respondent has already committed an offense inside a casino hotel and against property he was charged with the responsibility of protecting. Finding a person to be rehabilitated from the commission of a crime or an offense is equivalent to predicting that they will not sin again. This I cannot do with the respondent.

I find that the respondent's continued casino hotel registration and the issuance of a casino employee license to the respondent would be inimical to the policy of the Casino Control Act because he committed the offense of disorderly

persons theft during the course of his employment in a casino hotel, N.J.S.A. 5:12-86c(2) and g.

GOOD CHARACTER, HONESTY AND INTEGRITY

The concept of "good character, honesty and integrity" required of casino employee licensees by N.J.S.A. 5:12-89b(2) and 90b includes the examination of "...data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10 year period immediately preceding the filing of the application..." for licensure. The whole basis of the examination is for the purpose of correctly predicting, as far as possible, a persons future conduct. Will this applicant obey the law? Will this applicant honor the regulations governing the casino industry? Will this applicant be a credit to the casino industry as it is meant to operate in the State of New Jersey? *In re Application of Bally's Park Place, Inc. for a Casino License*, 10 N.J.A.R. 356, (1981) 366.

This respondent may very well obtain a reputation for good character, honesty and integrity in the future. His wife's family has been steadfast in their support of him during this episode of dishonest conduct. This speaks well for the respondent. He has established a measure of respect with them. His friends, relatives and employers also speak well of him. He is maturing and learning responsibility. But good character, honesty and integrity are not traits that one acquires in a short space of time; although they can be lost in a moment. This respondent's arrest record prevents him from enjoying a reputation for good character, honesty and integrity so soon after his last arrest. I disregard his arrest and conviction for blocking a passageway in Vineland in 1983. His unrebutted explanation, that while playing basketball in a school yard, he stopped to watch a craps game and was picked up and charged as a gambler, is plausible and I accept it. But on two occasions the respondent has stolen items from another. The last theft was of an item he should have been protecting from theft. It cannot be safely predicted of the respondent that he will conduct himself in the future by the standard required, i.e., that he will "...meet [ ] the public expectation that casinos and the industries which directly serve them will be operated by individuals of unquestionable honesty and integrity." *Bally's* supra. p. 366.

CONCLUSION OF LAW

I therefore **CONCLUDE** that the respondent lacks the requisite good character, honesty and integrity for casino employee licensure.

ORDER

It is therefore **ORDERED** that the respondent's application for casino employee licensure be **DENIED** and it is further **ORDERED** that the respondent's hotel registration be **REVOKED**.

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

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

November 9 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

11-15-88
DATE

Marianne Torres
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 15 1988
DATE

Ronald J. Rauh/KS
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

Nestor L. Vega
Toni Cox
Mario Vaca
Dick Cox
Evelyn Mendez
Tim Coxson
Patricia Coxson
Josie Vega

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 Police Report
P-3 Personal History Disclosure Form

For the Respondent:

R-1 through R-7 Letters of Recommendation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-M-1
APPLICATION NO. 04219-11
OAL DOCKET NO. CCC 6906-88
ORDER NO. 89-5-12

APPLICATION OF RALPH H. VOGEL

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 1, 1989,

IT IS on this 6th day of March 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6906-88
AGENCY DKT. NO. 89-M-1

RALPH H. VOGEL,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Mark H. Sandson, Esq., for petitioner (Hankin, Sandson & Sandman, attorneys)

Barth F. Aaron, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 7, 1988 Decided: December 22, 1988

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

STATEMENT OF THE CASE

Ralph H. Vogel (petitioner) seeks licensure as a casino key employee under the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The position in question is vice president of marketing/northeast for the Tropicana Casino Hotel. The holder of such a position is required to be licensed in accordance with the standards for a casino key employee pursuant to section 89 of the Casino Control Act and is also considered to be a qualifier of the casino licensee pursuant to section 85c.

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In a letter report to the Casino Control Commission dated August 22, 1988, the Division of Gaming Enforcement neither recommended nor objected to the petitioner's licensure. Rather, the Division raised questions concerning the petitioner's suitability for licensure based upon its allegation that the petitioner had taken tax deductions of $2,000 on his 1982 through 1985 federal income tax returns, without actually having made the appropriate IRA contributions to support the deductions. The issues to be resolved in this matter are as follows:

1. Has the petitioner demonstrated by clear and convincing evidence that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee pursuant to section 89b(1) of the Casino Control Act, in light of his tax deductions of $2,000 on his 1982 through 1985 federal income tax returns, without actually having made the appropriate IRA contributions.

2. Has the petitioner demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino key employee pursuant to section 89b(2) of the act, in light of his tax deductions of $2,000 on his 1982 through 1985 federal income tax returns, without actually having made the appropriate IRA contributions.

PROCEDURAL HISTORY

On September 22, 1988, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on October 13, 1988. The hearing was held as scheduled on November 7, 1988, in Galloway Township, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 44-year-old resident of Margate, New Jersey. He has been a licensed casino employee since 1978. Between 1978 and 1982, the petitioner worked as a craps and blackjack dealer, box person, and floor person at Resorts International Hotel and Casino. Beginning in December 1982, the petitioner was employed by the Tropicana.

The petitioner started at the Tropicana as a marketing representative, and then became a branch office manager. He subsequently served as an executive host and then a senior executive host. In July 1987, the petitioner became the Director of Hosts at the Tropicana. He was subsequently appointed as vice president of Regional Marketing. After a change in management, the petitioner was downgraded to director.

The petitioner was subsequently recommended for the key employee position of vice president of regional marketing. In March 1988, the petitioner submitted his Personal History Disclosure Form No. 1 (Exhibit R-2). With this application, the petitioner submitted his income tax returns for the years 1982 through 1986. According to the petitioner's testimony, he knew that these documents would be investigated by the Division of Gaming Enforcement.

Division Investigator Edward Boles testified that he reviewed the petitioner's Personal History Disclosure Form and he discussed the information with the petitioner on March 31, 1988. According to Mr. Boles, the petitioner had taken an IRA contribution deduction on his tax returns for 1987 and 1986. Mr. Boles was able to verify that the petitioner had actually made the contribution.

Mr. Boles testified that he was unable to verify that the petitioner had made the contributions to support the IRA contribution deductions which he took on his 1982 through 1985 tax returns. He asked the petitioner about these deductions on March 31, 1988. According to Mr. Boles, the petitioner explained that he had a number of problems with the banks he had been using. The petitioner could not remember with which bank he had made the contributions. However, the petitioner told the investigator that he had cashed out the accounts when he had some financial problems. In addition, the petitioner stated that he had changed accountants during this period.

It was the testimony of Investigator Boles that the petitioner named Ralph Gaskill as a banker who would have information about the accounts. Mr. Boles spoke to Mr. Gaskill and learned that the MidLantic Bank might have information. Mr. Boles contacted that bank and was able to verify that the petitioner made an IRA contribution for 1987. Mr. Gaskill also suggested that Mr. Boles contact the Collective Federal Savings and Loan. However, that institution could not help because it was not able to research its files by a customer's name.

Investigator Boles testified that he was also present when the petitioner participated in a sworn interview on July 28, 1988 (Exhibit R-1). According to Mr. Boles, the petitioner provided the same explanations during the sworn interview that he had provided earlier. Mr. Boles described the petitioner as being "real helpful." In his opinion, the petitioner tried hard to find the documentation concerning the IRA contributions. Investigator Boles testified candidly that there was nothing else in his entire investigation of the petitioner that negatively affected the petitioner's suitability for licensure. Nothing came to Mr. Boles' attention during the investigation that caused him to disbelieve the petitioner's explanation. His investigative summary report dated July 11, 1988, was admitted into evidence as Exhibit R-3.

The petitioner was a sincere and credible witness on his own behalf. Although he has tried diligently to locate the records of his IRA contributions between 1982 and 1985, the petitioner has been unable to find them. Although it is his honest belief that he made the IRA contributions, the petitioner has filed amended tax returns for the four years in question (Exhibit P-1). In explanation the petitioner stated on the amendments, "taxpayer is unable to locate proof of establishment of IRA and believes the most honest approach is to amend this return." With the amended tax returns, the petitioner submitted checks totalling $4,506 in tax and interest (Exhibit P-2).

The petitioner testified that his accountant since 1982 has been Gabriel Berkovitz. The petitioner specifically recalled discussing with Mr. Berkovitz that he intended to make a IRA contribution in 1987. The petitioner assumes that he had such a discussion with Mr. Berkovitz prior to filing his tax returns for the previous years, but he had no specific recollection of the discussions. However, the petitioner did have some recollection of making the IRA contributions and he also knew that his accountant would enter a deduction on his tax return, and that he would therefore have to make the contribution.

The petitioner explained that he had been involved in an unstable personal relationship during the time in question and that he had also experienced some chaotic times at the Tropicana. According to the petitioner, the confusion concerning his IRA contributions could be attributed to those problems. Nevertheless, the petitioner's personal life is much more settled now and he is soon to be married. In addition, the petitioner stated sincerely that he has always tried to maintain his honesty and integrity and he has never experienced a problem with his

financial credit (see Exhibit P-4). Although he was once denied a mortgage, the denial resulted from a structural problem with the house, and there was no problem with the petitioner's credit standing.

The petitioner testified candidly that he has learned that he must pay more attention to his taxes. Previously, he had simply gathered the financial information and sent it to his accountant. Whatever the accountant then compiled, the petitioner would simply write a check. The petitioner had not previously given specific instructions to his accountant and had generally left to the accountant the handling of deductions. Significantly, the petitioner noted that he has an eight-year-old daughter who he supports. However, he does not declare her as a dependent on his income tax returns because he has not been married and it is his moral judgment that he should be married in order to take the deduction.

Gabriel Berkovitz testified on behalf of the petitioner. He is partially retired from his accounting firm, after being in practice for 45 years. He has known the petitioner for approximately eight years and he characterizes the petitioner as a caring and thoughtful man.

Mr. Berkovitz stated that it would have been inconsistent for the petitioner not to have made the IRA contributions. In his opinion, the petitioner may have closed out the IRA accounts without thinking about the consequences. According to Mr. Berkovitz, the petitioner had never asked that an unlawful deduction be taken.

Mr. Berkovitz described the standard practice at his accounting firm concerning IRA deductions. Very simply, the deduction would be taken and the client would be reminded to make the contribution. Mr. Berkovitz could not recall asking the petitioner each successive year if he had made the contribution for the previous year. Based upon what he knows about the petitioner, Mr. Berkovitz believes that the petitioner did make the contributions in question.

Fred Fox and Vic Campolattano testified on the petitioner's behalf. These men have known the petitioner for some time in his professional capacity. Both regard him as a gentleman and a man of honesty and integrity. Similar views concerning the petitioner's honesty and integrity were expressed by numerous writers who submitted letters on the petitioner's behalf (Exhibits P-3A through K).

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino key employee license demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to section 89b(2) of the Act. In addition, such an applicant must demonstrate that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee, pursuant to section 89b(1) of the act.

It is undisputed in this matter that the petitioner was unable to produce documentation establishing that he actually made the appropriate IRA contributions to support the tax deductions taken on his federal income tax returns for 1982 through 1985. However, it is the sincere and credible belief of the petitioner that he did make these contributions. It is apparent that if he did not, it was the result of a mistake and not the result of any intention on his part to have taken an income tax deduction to which he was not entitled.

The petitioner has filed amended tax returns for the period in question and has paid the resulting additional tax and interest. Significantly, the extensive investigation conducted by the Division of Gaming Enforcement revealed no other question concerning the petitioner's suitability for licensure as a casino key employee. In addition, numerous witnesses and writers have credibly attested to the petitioner's honesty and integrity.

Based upon the foregoing undisputed facts and discussion, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee, pursuant to section 89b(1) of the Casino Control Act. I further **CONCLUDE** that the petitioner has demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to section 89b(2) of the Act. Therefore, I **CONCLUDE**

that the petitioner's application for licensure as a casino key employee/qualifier should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ralph H. Vogel for licensure as a casino key employee be **GRANTED**.

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

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

December 22, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12-22-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 27 1988
DATE

Robert J. Lane
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For petitioner:

P-1	Amended tax returns for 1982 through 1985
P-2	Copies of checks for additional tax paid
P-3A through K	Eleven letters of recommendation
P-4	Updated credit profile, dated November 4, 1988

For respondent:

R-1	Transcript of sworn interview, dated July 28, 1988
R-2	Personal History Disclosure Form #1, dated February 19, 1988, with attached income tax returns
R-3	Investigative summary report, dated July 11, 1988
R-4	IRA agreement, signature card and passbook
R-5	MidLantic IRA certificate of deposit

WITNESSES

For petitioner:

Ralph H. Vogel
Gabriel Berkovitz
Fred Fox
Vic Campolattano

For respondent:

Edward L. Boles

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-49
OAL DOCKET NO. CCC 6176-88
REGISTRATION NO. 21953-40
ORDER NO. 89-13-16

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. WILLIAM MARK VON BOSSE, Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of March 15 and 29, 1989,

IT IS on this 18th day of April 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by William Mark VonBosse is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 89-13-16

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6176-88
AGENCY DKT. NO. 89-49

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
WILLIAM M. VON BOSSE,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Donald R. Belsole, Acting Attorney General of New Jersey, attorney)

William M. Von Bosse, respondent, pro se

Record Closed: January 26, 1989 Decided: February 1, 1989

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

The Division of Gaming Enforcement ("Division") filed a complaint on July 27, 1988, with the Casino Control Commission ("Commission") seeking revocation of William M. Von Bosse's casino employee registration. The complaint charged that Von Bosse had been convicted on his plea of guilty to Sexual Assault, a second degree offense, contrary to N.J.S.A. 2C:14-2b. As a result of this conviction, the Division took the position that Von Bosse had committed a per se disqualifying offense under the provisions of N.J.S.A. 5:12-86(c) and that therefore his casino hotel employee registration had to be revoked.

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Mr. Von Bosse requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held on October 7, 1988, before Honorable Edgar R. Holmes, ALJ, and a Prehearing Order was issued by Judge Holmes on October 14, 1988. Subsequently, a hearing was held before Administrative Law Judge Jeff S. Masin on January 20, 1989, at the Office of Administrative Law in Atlantic City. Following the hearing, the judge received a report on behalf of Mr. Von Bosse from Dr. E. Souffront Scott of the Atlantic Mental Health Center on January 26, 1989, and the record closed on that date.

ISSUES

The Prehearing Order establishes the following issues for consideration at the hearing:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:14-2a(1).

B. Whether respondent may demonstrate rehabiltation pursuant to section 91d of the Casino Control Act.

EVIDENCE

The evidence in this case on behalf of the Division consisted of testimony of William Von Bosse, called as a witness by the Division, and police reports and other documents relating to the criminal offense and the conviction therefor. Mr. Von Bosse, who is 27 years old and currently employed at the Atlantic City Supported Work Program which trains persons for different types of employment and who presently is working through that program as an elevator operator at a State office building in Atlantic City, acknowledged his criminal conviction and the underlying conduct. Mr. Von Bosse was indicted by the Atlantic County Grand Jury in Indictment 86-07-1356D, filed on July 17, 1986. The indictment charged that Von Bosse had on June 4, 1986, committed sexual penetration upon J.V., his three-year-old son, by inserting his fingers into J.V.'s anus, in violation of N.J.S.A. 2C:14-2a(1). In addition, additional counts of the indictment charged violations of this same statutory provision in connection with sexual penetration on the same child involving oral sex on both the morning and afternoon of June 4, 1986. The fourth count of the indictment charged Von Bosse with sexual contact in violation of

section 2C:14-2b involving sexual contact orally upon the anal areas and buttock of the child "for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying himself and William Von Bosse is at least four years old than J.V." An additional count charging violation of the sexual contact statute under the same circumstances of age and reason charged Von Bosse in connection with touching his son's penis both in the morning and the afternoon, resulting in separate counts for each touching. Finally, the indictment charged in a seventh count that Von Bosse had violated N.J.S.A. 9:6-1 in causing harm that would make his son an abused child contrary to the provisions of N.J.S.A. 2C:24-4a in that

> having a legal duty for the care of J.V., a three-year-old male child, to engage in sexual conduct which would impair or debauch the morals of J.V. or which would cause the child harm that would make J.V. an abused child . . . .

The eighth count of the indictment charged Von Bosse with debauching or endangering the morals of J.V. by the commission of "indecent, immoral or unlawful act or deed in the presence of J.V., a violation of N.J.S.A. 9:6-1.

The police reports provided by the Galloway Township Police Department include statements taken from the child's grandmother, mother of Mrs. Von Bosse, as well as from the three-year-old child in the presence of his mother and grandmother and a statement from Mr. Von Bosse himself. In Von Bosse's statement, given after he waived his constitutional rights, Von Bosse admitted having committed several of the acts charged in the indictment in both the morning and afternoon of June 4. He denied certain of the actions, such as putting his finger into his son's anus, but admitted the lickings. At the hearing, Von Bosse agreed that he was guilty of the charges in the indictment.

As a result of his indictment, Mr. Von Bosse ultimately entered a plea of guilty to count five of the indictment, which had charged him with touching his son's penis, illegal sexual contact as defined by N.J.S.A. 2C:14-2b, "for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying himself and William Von Bosse is at least four years older than J.V." He was sentenced to seven years in prison and given credit for 118 days. He was ordered to pay a $30 penalty to the Violent Crimes Compensation Board. The remaining counts of the indictment were dismissed. The sentencing documents indicate that the sentencing judge, Honorable John B. Mariano,

JSC, concluded that there were no mitigating factors in favor of Mr. Von Bosse and that the aggravating factors were the need to deter the defendant and others from violating the law, the risk that defendant will commit another crime and

> The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistence.

The reason for sentence set forth by Judge Mariano was

> Defendant seems to fall between cracks — Avenal — Report requires normal sentencing despite diminished abilities, no prior record — long term employment. However given nature of crime presumptive sentence called for as deterent.

Mr. Von Bosse testified that he served 19 months in jail, mostly at the Midstate Correctional Facility. He was released in March 1988, and placed in the Intensive Parole Supervision Program. While in jail, he attended self awareness groups for sexual offenders and also went to school seeking his GDE certificate. He received a certificate for attending an anger management course, which he volunteered for. He claimed that while in prison, he tried to commit suicide on three occasions. He is presently on parole and sees his parole officer, Paul A. McIntyre, practially every day. Von Bosse would have been off the Intensive Supervision Program three months ago, but he is now on welfare and the supported work program, which is only a six-month program. In order to get off of ISP, he has to have a permanent job which will allow him to go on regular parole until March 8, 1990. There is a possibility that he may be off parole sooner depending on his work status.

The respondent sees Dr. E. Souffront Scott of the Atlantic Mental Health Center in Atlantic City every week. Dr. Scott is a pyschiatrist. He has signed up to see her for five years, although this does go well beyond the anticipated end of his parole.

Von Bosse worked at Balley's Grand Hotel for five months from April to September 1988, after his release from prison. He was employed as a kitchen utility worker and pot washer and also cleaned in the banquet areas. He quit this job because he

was not sure if he would continue to have his license and because he was "too ashamed" if the matter of why he was losing his license had come up. Many of the employees knew of his criminal record and the reason for it, and he apparently was the subject of some harassment. Prior to his conviction, the respondent worked at the Golden Nugget for six and one-half years.

Mr. Von Bosse is also the father of a one-year-old child. As a condition of parole, he is required to have no contact at all with his family.

The defendant did not specifically give a reason for the conduct involving his son. He did note, however, that he himself was a foster child who had been sexually assaulted as a youth.

In his direct testimony as his own witness, Von Bosse noted that the incident of Juen 4 was a "one-time incident." On questioning by the court, Von Bosse explained that he has a third grade level education, although he said that he attended grammar school until the seventh grade and was then placed in a school for the handicapped. He is an epileptic and is "slow" in his own words. While this judge would not venture any opinion as to Mr. Von Bosse's exact difficulties, it was clear at the hearing that he does seem to suffer from some impairment.

DISCUSSION

The record establishes both through the police reports and Mr. Von Bosse's own testimony that he in fact was guilty of the offense to which he pled. It goes without saying that the offense was extremely serious. It is difficult, if not impossible, to exactly comprehend why the respondent might have acted as he did. Perhaps a clue lies in his assertion that as a child he was sexually assaulted.

In light of his conviction, I **CONCLUDE** that Mr. Von Bosse is disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) in that his conviction is for an offense which is a listed disqualifier under the statute. Therefore, his only hope of retaining his license is if he can establish his rehabilitation by clear and convincing evidence, as permitted by N.J.S.A. 5:12-91d.

Mr. Von Bosse's criminal conviction was for a most heinous act. Although there is no reason to suspect that his retention of registration would put him in contact with small children and therefore little reason to think that he would become involved in an incident of similar nature in the course of casino hotel employment, the Legislature has seen fit to list this type of offense as an automatic disqualification, indicating the seriousness with which that body viewed such conduct in relation to casino employee registration.

Mr. Von Bosse is currently 27. The incident with his son occurred approximately two and one-half years ago when he would have been about 24 and one-half. While fairly young, given the nature of the offense, his age is not an especially relevant consideration.

Von Bosse's work record prior to the incident was impressive in the sense that he retained employment for a lengthy period in the casino industry without any difficulty. In fact, it appears that he worked successfully after release from prison and left his job only because of the stress and uncertainty arising from the conviction and its possible effect on his licensure, as well difficulties which he encountered with other employees due to the nature of his criminal offense.

As previously stated, there is hardly any basis upon which to conclude why Von Bosse engaged in such conduct. Surely, there are substantial reasons to believe that significant mental disturbance of some nature had to play some role in this conduct, although that is undefined. The evaluation provided by Dr. Scott indicates that Von Bosse, at the time of intake, presented "feelings of depression, guilt, suicidal ideation, anxiety and flashbacks as well as nightmares relating to the sexual abuse of his young son." In addition, there is reference to "painful aspects of his childhood that could have led to the sexual abuse."

In assessing whether Mr. Von Bosse has proven rehabilitation by the requisite clear and convincing evidence, Dr. Scott's report indicates a "fair" prognosis of an individual with a diagnosis of "major depression, recurrent, moderate" and "pedophilia, same sex." The doctor indicates Von Bosse plans to continue with weekly psychotherapy sessions and that it is impossible to predict the future, although progress is "promising." Dr. Scott believes that while a job which would place children under Von Bosse's care would not be recommended, "employment in an adult setting should not be a problem."

Perhaps the major difficulty in determining whether rehabilitation has been achieved with this type of situation is that the criminal offense involved is not one which is likely to ever occur in a casino or casino hotel context, at least within the nature of the positions that Von Bosse has held in the casino industry. As such, if he were to return to work, there is probably very little likelihood of his becoming involved criminally in such conduct at work. However, based upon what occurred, and upon Dr. Scott's limited ability at this point to predict what may occur in the future, there has to be some significant question as to whether Von Bosse is yet free of whatever may have caused him to act as he did toward his son. Therefore, while there may be little relationship between his criminal conduct and his likely success as an employee in the industry, it is not so clear at this time that the Commission can be assured with reasonable certainty that Von Bosse will not again engage in the kind of conduct for which he was punished. Under the circumstances, a finding of rehabilitation by clear and convincing evidence at this time seems premature. Mr. Von Bosse intends to continue with intensive therapy with Dr. Scott for quite some time. In the future, after having further treatment, the respondent may be able to demonstrate that he has rehabilitated himself and that there is little likelihood of any reoccurence. At this point, I believe that it is premature to make such a determination. As such, I **CONCLUDE** that Mr. Von Bosse has failed to establish his rehabilitation by clear and convincing evidence. His casino hotel registration must be **REVOKED.**

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

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

DATE — JEFF S. MASIN, ALJ

Receipt Acknowledged:

2/21/89
DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 6 1989
DATE — OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment 86-07-1356D

P-2 Judgement of Conviction And Order For Commitment, with attached sentence work sheet and reason for sentence

P-3 Galloway Township Police Department Investigation Report, dated June 21, 1986, with attached statements

On behalf of respondent:

R-1 Letter of October 10, 1988, from Ron DiOrio

R-2 Letter of October 12, 1988, from Mrs. Karen Taylor

R-3 Certificate of Achievement, State of New Jersey Self-Awareness Group Counseling, dated May 12, 1987

R-4 Mid-State Correctional Facility Anger/Management/Attitude Control Group Letter of Successful Completion, dated October 7, 1987

R-5 Certificate of Promotion, dated February 19, 1988

R-6 Letter of January 23, 1989, from E. Souffront Scott, Ph.D.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 355803 and 355804

IN THE MATTER OF THE PETITIONS OF :
MURRELL WATKINS AND ABRAHAM MCDANIEL :
TO INTERVENE IN THE CASINO LICENSE :
RENEWAL PROCEEDINGS FOR BALLY'S PARK :
PLACE, INC. AND RESORTS INTERNATIONAL:
HOTEL, INC. :

O P I N I O N

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair
Valerie H. Armstrong, Vice-Chair
W. David Waters, Commissioner
E. Kenneth Burdge, Commissioner

APPEARANCES

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Atlantic City, New Jersey 08401

For Division of Gaming Enforcement:

Katherine A. Smith, DAG

I. INTRODUCTION

During the "public comment" portion of the January 20, 1988, public meeting of the Casino Control Commission (Commission), Murrell Watkins and Abraham McDaniel (petitioners) alleged that two casino licensees, Bally's Park Place, Inc. (Bally's) and Resorts International Hotel, Inc. (Resorts), had engaged in racial discrimination against their respective bus companies, Ocean Breeze Transit Company, Inc. and Cobra Coach Lines, Inc. As a result, the Commission directed the Division of Gaming Enforcement (Division) to investigate the allegations and to file a report with the Commission. The Division's report, dated September 19, 1988, found that there was no conclusive evidence that racially discriminatory conduct had occurred.

On October 6, 1988, Watkins and McDaniel filed petitions to intervene in the casino license renewal proceedings for Resorts and Bally's. By letter dated November 4, 1988, the Commission staff advised petitioners' counsel that the renewal proceedings in which intervention had been requested were no longer pending since two year license renewals had already been granted to Resorts (in February 1988) and Bally's (in September

1988). Accordingly, petitioners were asked whether they wished to withdraw their petitions.

When no response to the staff's inquiry was forthcoming, petitioners were further advised by letter dated December 1, 1988, that their intervention petitions would be administratively dismissed as moot unless a response was received by December 15, 1988. Petitioners' counsel responded by letter dated December 13, 1988, and asserted that the petitions were not moot because the petitioners would shortly file a rebuttal to the Division's report which would justify the revocation of the casino licenses in question.

On December 29, 1988, petitioners filed their rebuttal to the Division's report and requested a private meeting with the Chairman of the Commission to discuss the rebuttal and submit additional documentary evidence in support of their claims. By letter dated January 4, 1989, petitioners' request for a private meeting with the Chairman was rejected because of the ongoing contested case before the Commission. In light of petitioners' continuing claim that the petitions were not moot, the Commission staff requested petitioners' counsel to brief the mootness issue. The staff also noted that an issue existed as to petitioners' standing to request the revocation of a casino license.

By letter dated January 23, 1989, petitioners' counsel responded to the request for a brief on the issue of mootness by indicating that the documentation submitted with their rebuttal

was significant enough to require the casino licenses of Resorts and Bally's to be revoked. The rebuttal, as amended on January 26, 1989, disputed the Division's findings and alleged that the Division overlooked or misconstrued certain evidence which purportedly proved the petitioners' claims of racial discrimination.

By letter-report dated February 8, 1989, the Division recommended that the petitions be dismissed for mootness and lack of standing. A hearing was held on the petitions at the Commission's February 22, 1989, public meeting. At the inception of the hearing, counsel for petitioners voluntarily withdrew their requests to intervene, conceding that such requests were moot because the license proceedings in question had been concluded before the petitions to intervene were filed. During the course of the February 22 hearing, petitioners raised for the first time the claim that sections 134 and 135 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., confer standing on private individuals to bring license revocation proceedings against casino licensees when such proceedings are based upon allegations of racial discrimination.

II. PETITIONERS' STANDING TO SEEK THE REVOCATION OF A CASINO LICENSE

In considering the petitioners' alternative request for the revocation of the casino licenses of Resorts and Bally's, the

Commission must first determine whether the petitioners have standing under the Act to initiate and prosecute a proceeding to revoke a casino license. For the reasons set forth below, petitioners do not have standing.

Section 76 of the Act, which delineates the duties and powers of the Division, provides in pertinent part that the Division "shall ... enforce the provisions of this act and all regulations promulgated hereunder, and prosecute before the commission all proceedings for violations of this act or any regulations promulgated hereunder." N.J.S.A. 5:12-76a.; emphasis supplied. Moreover, it is the Division's responsibility to "provide the commission with all information necessary for all action under [the licensing provisions] of this act and for all proceedings involving enforcement of the provisions of this act or any regulations promulgated hereunder." Id. Finally, subsection b. of section 76 declares that the Division shall "investigate violations of this act" and "initiate, prosecute and defend such proceedings before the commission, or appeals therefrom, as the division may deem appropriate." N.J.S.A. 5:12-76b.(3) and (4); emphasis supplied.

The inescapable conclusion to be drawn from these statutory provisions is that the Division is responsible for investigating all alleged violations of the Act and, if it believes such action is appropriate, initiating a violation proceeding against a licensee by the filing of a written

complaint with the Commission.[1] Nowhere in the Act is there any express grant of authority to any person other than the Division to initiate or prosecute alleged violations of the Act or regulations. Indeed, given the scope and magnitude of the Division's authority, the Commission would be loathe to impute such authority to any other person in the absence of a clear statutory directive. None appears.

The Commission has consistently held that the filing of a complaint against a casino licensee or a request for the revocation of a casino license is within the exclusive province of the Division. See In the Matter of the Public Advocate's Motion to Intervene in Boardwalk Regency Corporation's Application For Investment Credit Pursuant to N.J.S.A. 5:12-144 (PRN 243405; October 1984) (holding that the Public Advocate may not initiate a proceeding to enforce a casino license condition concerning housing obligations in Atlantic City); Hotel Employees and Restaurant Employees Local 54, et al. v. Read, et al. (Superior Court, Law Division, Docket No. L-86-3965, December 1986) (granting Commission motion to dismiss complaint by Local 54 seeking an order to compel the Commission to seize a casino

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1. Subsection 108a. provides that "[a]ny proceeding against a licensee or registrant shall be brought on by written complaint." N.J.S.A. 5:12-108a.

license and appoint a conservator based on the financial status of a casino licensee); Petition of Brotherhood of Painters and Allied Trades, Local Union No. 277 (PRN 275706; October 1987) (holding that a union local does not have standing to petition for the revocation of a casino license based upon the licensee's alleged violation of the casino hotel facility requirements of the Act and regulations); and Petitions of Boardwalk Properties, Inc. and Pratt Hotel Corporation for a Declaratory Ruling Regarding the Columbus Plaza Site (PRN 245803 and 258803; October 1988) (Boardwalk Properties)(holding that a casino licensee and its co-developer of a proposed casino hotel do not have standing to seek a declaratory ruling that another casino licensee's acquisition of property allegedly needed for the proposed facility violates the pro-competition policies of the Act).

There are two primary reasons why the Legislature gave this exclusive authority to the Division. First, as noted in the Boardwalk Properties matter, the Attorney General and the Director of the Division are charged with allocating the resources of the Division so as to best achieve its responsibilities under the Act. See N.J.S.A. 5:12-55 and 56. Individual private interests should not be permitted to redirect or dilute the efforts of the Division, or divert its attention, by initiating essentially private enforcement proceedings against casino licensees. If such actions could be initiated by private interests, the Division would be statutorily obligated to

participate in the proceedings. See N.J.S.A. 5:12-76. The inevitable result of such a system would be the disruption of ongoing investigations and interference with the prosecutorial discretion of the Division. Clearly, the public policy goal of strict regulation would suffer were the Division required to pursue every private complaint lodged against a casino licensee.

For similar reasons, the Commission should not be required to entertain complaints filed against licensees by private parties. As noted by our Supreme Court,

> [t]he statutory and administrative controls over casino operations established by the [Casino Control] Act are extraordinarily pervasive and intensive .... The regulatory scheme is both comprehensive and minutely elaborate. [Knight v. Margate, 86 N.J. 374, 380-381 (1981)].

If the Commission were required to hear and decide every private complaint which might be filed against a casino licensee by a disgruntled competitor, employee, business associate or patron, the Commission would have virtually no opportunity to allocate its resources so as to best discharge its massive regulatory responsibilities under the Act.

The Commission is not suggesting that members of the public in general and interested persons in particular do not have a role to play in assuring that applicants and licensees under the Casino Control Act meet the rigorous standards of conduct embodied therein. This is precisely why all private

grievances brought to the Commission are referred to the Division -- so that the Division may exercise its investigative and prosecutorial discretion and determine whether the information warrants further action. Indeed, because of its commitment to the policies of equal opportunity, the Commission here took the highly unusual step of directing the Division to conduct a thorough investigation and to report formally to the Commission. The Division did so. Petitioners' disagreement with the conclusion reached by the Division does not, however, give petitioners the right to file their own complaint for license revocation.

Petitioners' attempt to rely on the provisions of sections 134 and 135 of the Act, N.J.S.A. 5:12-134 and -135, is equally unavailing. The petitioners have failed to offer any persuasive reason why these provisions, which define the affirmative action and equal employment opportunity obligations of casino licensees, should be read to grant standing to private parties to impose regulatory sanctions on casino licensees. Subsection 135e., by giving the Commission the discretionary power "[t]o enforce in a court of law the provisions of section 134 or to join in or assist any enforcement proceeding initiated by any aggrieved person," clearly does not purport to empower an aggrieved person to commence a disciplinary proceeding before the Commission. Obviously, the Commission could not serve as judge and prosecutor. Thus, subsection 135e. refers to actions

otherwise properly commenced before courts or other agencies, e.g., the Division on Civil Rights. See N.J.S.A. 10:5-1, et seq. Further, the Commission will not strain to reach an interpretation which would override the explicit delegation of enforcement responsibility granted by the remainder of the Act to the Division.

It is an elementary rule of statutory construction that a single provision of a statute should not be considered in a vacuum; rather, it is to be construed as a whole with reference to the system of which it is a part. Maritime Petroleum Corp. v. Jersey City, 1 N.J. 287-298 (1949). Absent some reason to conclude otherwise, sections 134 and 135 must be read in pari materia with those provisions of the Act, and in particular, section 76, which grant exclusive enforcement authority to the Division. The language of N.J.S.A. 5:12-135e. cited by the petitioners does nothing more than give the Commission the discretionary authority to join in independent enforcement proceedings initiated by an aggrieved party in a court of law or another agency.

Finally, petitioners cannot defeat the evident statutory purpose by invoking the authority of the Commission to reopen a license hearing at any time. See N.J.S.A. 5:12-88, as amended by L. 1987, c.354, §11, eff. January 4, 1988. The fact that the Commission can, without a formal request from the Division, compel a casino licensee to demonstrate its continuin

fitness to hold the license in no way creates a right in a third party to compel the Commission to exercise that authority. Rather, as was done here, the Commission would ordinarily refer any derogatory allegations to the Division for investigation and the Commission would rely on the Division's report in deciding if grounds for reopening a license hearing existed. While petitioners may disagree with the Division's findings, they cannot insist that the Commission reopen the license hearing nor can they interject themselves into the decisional process. A casino license is a matter of public concern and these petitioners have no individual right to object that a particular licensee is, in their view, unfit. Rather, if they have been aggrieved by the actions of a casino licensee, they may seek redress in a legally appropriate forum. That they have tried unsuccessfully to do so is no basis for converting the casino regulatory system into a common law court.

III. CONCLUSION

Petitioners cannot, and do not, dispute that the purpose of their amended petitions is the initiation of proceedings against Resorts and Bally's for the revocation of their casino licenses based upon alleged violations of section 134 of the Act. The Casino Control Act clearly establishes, as a matter of law, that no one other than the Division of Gaming Enforcement may initiate or prosecute a violation or revocation

proceeding against a licensee before the Commission. Accordingly, petitioners do not have standing to file or prosecute an action for the revocation of a casino license, and the instant petitions are hereby dismissed.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

W. David Waters, Commissioner

E. Kenneth Burdge, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-EA-47
APPLICATION NO. 58521-21
OAL DOCKET NO. CCC 5747-88
ORDER NO. 89-18-15

APPLICATION OF JOHN D. WESTHOFF, JR.

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1989,

IT IS on this 27th day of June 1989, ORDERED that the initial decision is modified as follows:

> The reference to N.J.S.A. 5:12-86(g) as the basis for the applicant's disqualification is erroneous. The applicant was convicted in federal court of an offense which, under New Jersey law, is equivalent to a disqualifying offense under N.J.S.A. 5:12-86(c)(1), to wit: conspiracy to commit theft in the third degree contrary to N.J.S.A. 2C:5-2 and 2C:20-1 et. seq. Under these circumstances, no reference to N.J.S.A. 5:12-86(g) is required.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /dp
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5747-88
AGENCY DKT. NO. 86-EA-47

JOHN D. WESTHOFF,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

John Westhoff, petitioner, pro se

Barth F. Aaron, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: February 9, 1989 Decided: March 22, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that the petitioner, John D. Westhoff, is statutorily disqualified from holding a casino employee license within the meaning of section 86(c)1 of the Casino Control Act (Act) by virtue of his federal conviction for conspiracy to transport stolen goods, securities, monies, fraudulent state tax stamps or articles used in counterfeiting in violation of 18 U.S.C.A., section 2314, despite the fact that such acts were not prosecuted in this State within the meaning of section 86(g) of the Act. The Division contends that Mr. Westhoff's federal conviction is analogous to a violation of N.J.S.A. 2C:5-2, conspiracy, and N.J.S.A. 2C:20-3, theft . The Division also alleges that the petitioner does not possess the requisite good character, honesty and integrity for casino licensure pursuant to section 89b(2) of the Act as incorporated within section 90b. The petitioner asserts rehabilitation pursuant to section 90h of the Act.

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PROCEDURAL HISTORY

The Division filed an amended letter with the Casino Control Commission (Commission) on April 1, 1986. The petitioner requested a hearing on July 11, 1988. On August 1, 1988, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 7, 1988, and the matter was scheduled for hearing on February 9, 1989, before the Honorable Edgar Holmes, Administrative Law Judge at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. On February 8, 1989, this matter was reassigned to the Honorable Stephen W. Thompson, Administrative Law Judge. The matter was heard and the record closed on February 9, 1989.

ISSUES

A. Whether petitioner committed the automatically disqualifying offenses of N.J.S.A. 2C:5-2, conspiracy, and N.J.S.A. 2C:20-3, theft, within the meaning of section 86c(1), even if such conduct was not prosecuted under the criminal laws of New Jersey, within the meaning of section 86g.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

Petitioner, John D. Westhoff, applied for a casino employee license on or before June 6, 1985. On June 6, 1985, the Division recommended that licensure be granted. At its June 14, 1985 meeting, the Commission stayed the granting of the license until it could obtain further information with regard to a $55,000 judgment which was rendered against

Mr. Westhoff.

The judgment was the result of a complaint filed against the petitioner by Kerr Steamship Company, Inc., his former employer, alleging that Mr. Westhoff defrauded Kerr Steamship Company, Inc., in the net amount of $546,574. The civil complaint, filed March 12, 1982, in the Camden County Superior Court, alleged that John D. Westhoff, while employed as East Coast head of operations for Kerr Steamship, issued checks payable to entities who supplied oil to his company purportedly for the payment of bunker oil to be provided to steamships. One purported request was confirmed in a Telex message, which was later determined to have been fraudulently made. Fuel oil was never supplied by the companies who supposedly were to deliver the oil, and the checks were revealed to have been fraudulently issued. The company's allegations were based on a voluntary statement given by a co-employee of John Westhoff, who implicated him in this scheme. No criminal charges were filed at that time. On September 6, 1984, a settlement agreement was reached and placed on the record. The settlement agreement stated the following: John Westhoff was to pay Kerr Steamship Company $55,000 in full settlement of all civil actions pending against him by Kerr Steamship Company. The money was to have been paid from the sale of his residence, which he and his wife owned along with his parents. The sale of the residence was to have been made no later than September 10, 1985. During the course of this settlement discussion, Mr. Westhoff made representations to the court that he had spoken to his wife and his parents, who had agreed that the house would be sold in settlement of this action. On January 17, 1985, a motion was made to vacate that settlement agreement, which was denied. It appears that Mr. Westhoff's wife and parents had refused to sign any agreement to sell their house. On April 4, 1985, the settlement agreement was upheld as to John Westhoff in the amount of $55,000. An opinion was issued by the Honorable Barry M. Weinberg, J.S.C., citing the petitioner for contempt of court because he had lied to the court during the settlement conference and later admitting that he had no authority to enter into any agreement involving his wife and his parents. Mr. Westhoff received a jail sentence of 90 days to be served on 45 weekends as a result of the contempt charge. The Appellate Division upheld the contempt charge, however, the jail sentence was reduced from 90 days to 10 days. The petitioner has not completed his sentence with regard to the contempt citation.

As a result of a federal investigation, Mr. Westhoff was indicted by a Federal Grand Jury, Criminal Action Number 85-333, for conspiracy, 18 U.S.C.A. §371 and for

transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles using counterfeiting, 18 U.S.C.A. §2314.

The indictment alleged that Mr. Westhoff knowingly and willfully transported an interstate commerce checks known to have been converted and taken by fraud in the amounts of $125,000, $140,000, $135,000 and $268,408, respectively. On December 27, 1985, the petitioner pled guilty to Count I of the indictment for conspiracy to transport stolen goods, securities, monies, fraudulent state tax stamps, or articles used in counterfeiting. On January 22, 1986, Mr. Westhoff's plea of guilty was accepted and the remaining charges were dismissed. Mr. Westhoff was sentenced to three years in prison.

Mr. Westhoff does not dispute the preceding narrative, however, Mr. Westhoff rationalized his conduct by accusing Kerr Steamship Company, Inc., of various forms of criminal conduct. Mr. Westhoff was particularly upset by an alleged broken promise made to him concerning his relocation from Cherry Hill to New York. Essentially, Mr. Westhoff justifies his criminal conduct as a vendetta against an unscrupulous employer. A review of the transcript reveals that most of the firms or companies Mr. Westhoff has worked for are "unprincipled crooks."

The Division asserts that the acts committed by Mr. Westhoff are comparable to the New Jersey offense of conspiracy to commit theft by deception (in excess of $500), N.J.S.A. 2C:5-2 and N.J.S.A. 2C:20-3. Accordingly, the Division recommends that Mr. Westhoff's licensure be denied for his conviction of a statutory disqualifying offense.

The above is credible, documented and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

(a) N.J.S.A. 5:12-86c(1) as incorporated within Section 86g

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. Section 86g provides that "the Commission shall deny a casino license to any applicant who if disqualified . . . by any act or acts which would constitute

any offense under subsection c. . . . even if such conduct has not or may not be prosecuted under the criminal laws of this state." Petitioner pled guilty on December 27, 1985, to one count of conspiracy to transport stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting in violation of 18 U.S.C.A., §2314.

In order to deny licensure under the automatic disqualification statute, it must be demonstrated that the federal conspiracy statute is akin to the New Jersey conspiracy statute. The federal criminal conspiracy statute is found at 18 U.S.C.A. §371. It states:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

The New Jersey criminal conspiracy statute is located at N.J.S.A. 2C:5-2. In part, this statute states:

> a. Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> 1. agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> 2. agrees to aid such person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
>
> . . . .
>
> d. Overt act. No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree or distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog as defined in chapter 35 of this title, unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

The comparability of these two provisions can be seen in State v. Sessoms, 187 N.J.

Super. 625 (Law Div. 1982). In Sessoms, a case that dealt with state and federal prosecutions of conspiracy, forgery and attempted theft by forgery, the state tried to indict an individual under the state conspiracy statute after the individual was acquitted on federal conspiracy charges for the same incident. The court held that the individual could not be prosecuted again because the offense were comparable. It wrote at 634 that:

> Both the federal and state statutes essentially provide the same definition of conspiracies, except that 18 U.S.C.A. 371 is directed against conspiracies to commit an offense agains the United States while N.J.S.A. 2C:5-2 includes conspiracies to commit any crime.

Consequently, the statutes can be deemed similar.

In the public policy declaration of the Casino Control Act, the legislature states that a primary purpose of the Act was to ensure "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). The legislature further asserted this public interest when it enacted N.J.S.A. 5:12-1b(8), which states:

> Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy of the State concerning gaming for private gain, participation in casino operations as a licensee or registrant under this Act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant and upon the discharge of the affirmative responsibility of each such licensee or registrant to provide to the regulatory investigatory authority established by this act any assistance and information necessary to assure that the policies declared by this act are achieved. . . .

Accordingly, the Act requires that every casino employee be either registered with or licensed by the Commission. N.J.S.A. 5:12-89, 5:12-90, 5:12-91. These statutes also provide that the license will be denied to an employee or a key employee if that employee is disqualified on the basis of the criteria found in N.J.S.A. 5:12-86. See, N.J.S.A. 5:12-89d and N.J.S.A. 5:12-90e. Futhermore, N.J.S.A. 5:12-86 allows the Commission the power to deny a casino license to any person who disqualified on the basis of any one of the statutorily listed criteria.

Based upon the documentary evidence and Mr. Westhoff's admissions, I am satisfied,

by a preponderance of the credible evidence, that petitioner committed a violation of N.J.S.A. 2C:5-2, conspiracy, and N.J.S.A. 2C:20-3, theft. Therefore, I **CONCLUDE** that petitioner is statutorily disqualified from casino licensure, pursuant ot section 86c(1) of the Act as incorporated within section 86g.

(B) N.J.S.A. 5:12-89b(2) as incorporated within section 90b

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

The Commission has held that the disqualification criterion found in section 86b cannot be seperated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (slot attendant), OAL DKT. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

I have had the opportunity to observe Mr. Westhoff's demeanor and credibility. His testimony was deceptive, manipulative, self-serving and utterly without remorse (except for his getting caught). Although he admits to the criminal conduct, I am not convinced that given the opportunity, he would not revert to his old ways. To put it bluntly, Mr.

Westhoff possesses nowhere near the requisite good character, honesty and integrity for casino licensure.

Therefore, I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence his good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mr. Westhoff is an applicant for a casino employee license as a craps dealer. As such, he will have substantial contact with patrons of the casino.

Second, the Division has established that petitioner committed a violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:20-3 — conspiracy to commit theft, pursuant to section 86g of the Act. Given the massive fraud involved in this matter and the utter disdain Mr. Westhoff demonstrated to the court in September 1984, these were extremely serious offenses.

Third, the petitioner acknowledges his misconduct, however, he justifies his criminal conduct by asserting his belief that "since his employers are crooks, it is okay for him to

be a crook."

Fourth, petitioner's behavior appears to repetitive. Petitioner's explanations as to a theft of services conviction in 1984 and in 1971 for obtaining money under false pretenses were simply unconvincing.

Fifth, the petitioner is 41 years of age. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the petitioner's disqualifying misconduct involved a plea of guilty in January 1986. There are indicia of other criminal activities prior to the disqualifying offense.

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

Eighth, the petitioner has demonstrated little in the way of rehabilitation. Although he pled guilty to the charge in 1985, he rationalizes his misconduct. The fact that Mr. Westhoff has failed to satisfy to any significant degree the judgment against him must be given substantial weight when assessing rehabilitation. Mr. Westhoff argues that he is entitled to "prospective" rehabiliation. His argument essentially is "give me a job and maybe I will pay the judgment." The Act just does not work that way. In order to fairly predict the future, the petitioner's past conduct must be closely examined and it must be established that some positive changes have occurred in petitioner's situation that could justify licensure.

The fact that Mr. Westhoff committed massive acts of fraud and duplicity while he was head of East Coast operations for Kerr Steamship Company, Inc. is troubling enough. However, what is particulary bothersome is the mind-set he has used to rationalize his criminal conduct. After listening to the testimony of Mr. Westhoff and assessing his demeanor, a singular impression stands out: that since most employers are crooks, it is okay to be a crook.

After considering all the factors listed in N.J.S.A. 5:12-90h, including the massive amount of fraud perpetuated, the contempt citation, the fact that the judgment remains unsatisfied and after assessing the credibility and demeanor of Mr. Westhoff and finding him to be an incredible witness, I am not persuaded that petitioner has met his statutory

burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the petitioner has not affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the application of John D. Westhoff for a casino employee license (DGE 58528-21) be **DENIED.**

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

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

March 22, 1989
DATE

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

Receipt Acknowledged:

3/27/89
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 27 1989
DATE

Jayne LaVecchia /K.S.
OFFICE OF ADMINISTRATIVE LAW

lar

WITNESS LIST

For the petitioner:

John D. Westhoff

For the respondent:

None

EXHIBIT LIST

For the petitioner:

None

For the respondent:

R-1 State of New Jersey, Division of Gaming Investigative Summary Report, dated June 4, 1985

R-2 Division of Gaming Supplementary Summary Report, dated September 17, 1985

R-3 Division of Gaming Enforcement Supplementary Report, dated September 20, 1985

R-4 Kerr Steamship Company Inc. v. John D. Westhoff, 204 N.J. Super. 300 (1985)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-78
APPLICATION NO. 21159-21
OAL DOCKET NO. CCC 0048-88
ORDER NO. 88-48-5

APPLICATION OF JAMES WHEELER

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 7, 1988; and a motion to reject the initial decision and grant the application having failed to achieve a majority vote; but all four commissioners having agreed that the initial decision should be modified in one particular,

IT IS on this 21st day of February 1989, ORDERED that the initial decision is modified as follows:

> To the extent that the ALJ, in his assessment of the rehabilitation criteria, based his determinations on the fact that the applicant does not attend church and is not involved in any community, fraternal, social or charitable organization, it is disapproved by the Commission. While active involvement in such activities will tend to establish rehabilitation pursuant to N.J.S.A. 5:12-90(h), the absence of such involvement is irrelevant.

ORDER NO. 88-48-5

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 52:14B-10(c), the application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /SAS
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 48-88
AGENCY DKT. NO. 88-EA-78

JAMES WHEELER,
Petitioner,
v.
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

James Wheeler, the petitioner, pro se

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

Record Closed: October 21, 1988 Decided: October 31, 1988

BEFORE **STEVEN L. CARNES, ALJ:**

STATEMENT OF THE CASE

The petitioner, James Wheeler, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (craps dealer and blackjack and craps floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

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PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a craps dealer and a blackjack and craps floorperson. By letter to the Commission, dated November 6, 1987, the Division objected to the application of the petitioner for licensure as a craps dealer and a blackjack and craps floorperson, asserting that the petitioner had committed Theft by deception in excess of $500, which is a disqualifying offense under sections 86c(1) and 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on December 7, 1987, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated December 15, 1987, which was received by the Commission on December 21, 1987, the petitioner requested a hearing. On December 29, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on January 6, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter on March 3, 1988, before Administrative Law Judge Stephen W. Thompson. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, Theft by Deception in the third degree.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on May 24, 1988, in the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey. At the conclusion of the day, the case was

continued until July 11, 1988, in order to afford the Division an opportunity to obtain additional documentation in order to clarify certain issues raised by the evidence. The July 11, 1988 hearing was converted to a telephone conference at the request of the Division and evidentiary issues were discussed. The hearing was rescheduled and was held on October 21, 1988, in the Municipal Courtroom, Pleasantville Police Department, Pleasantville, New Jersey, after which the record closed.

At the hearing, the Division moved to amend the pleadings pursuant to N.J.A.C. 1:1-6.2 to allege that the petitioner had committed Falsifying or Tampering with Records, in violation of N.J.S.A. 2C:21-4, which is a disqualifying offense under sections 86c(1) and 86g. I found the amendment to be in the interest of efficiency and expediency and supported by the evidence. I further found that the amendment would not create undue prejudice. As such, I granted the Division's motion to amend the pleadings.

THE FACTS

On November 3, 1980, the petitioner became employed at Harrah's Marina Hotel Casino (Harrah's) as an unlicensed dealer. On February 25, 1981, the petitioner was terminated from this employment as he had not obtained a dealers license from the Commission (R-9, and P-5). On March 30, 1981, the petitioner became employed at the Playboy Hotel and Casino (Playboy) as a craps dealer. On September 9, 1985, he was promoted to a boxperson, and he retained that position until he was "laid off" on May 29, 1987, due to staffing cut backs caused by closure of a portion of the casino (R-8).

On July 16, 1981, the petitioner filed a claim for unemployment benefits with the Division of Unemployment and Disability Insurance (Division of Unemployment), (R-1, R-2, R-4, and R-5). The basis of the petitioner's claim was that he had been terminated from his position at Harrah's. The petitioner did not inform the Division of Unemployment that he was working at Playboy at the time. He represented to them that he was unemployed. The petitioner was determined to be eligible for benefits in the amount of $93.00 per week (R-2).

The petitioner knew that it was wrong to collect the unemployment checks. He collected the benefits because he was behind in paying his bills. The bills were ordinary household expenses such as rent, electric, gas and car repairs. He did not have any emergency expenses at that time. He stated he was under stress because he had just

relocated to Atlantic City and had been through two periods where he had been "laid off." The petitioner voluntarily stopped collecting unemployment benefits on October 27, 1981 (benefits for the week ending October 14, 1981) (R-2 and R-4), because he received a promotion in September and had received a raise. Because the petitioner failed to notify his local unemployment office of his employment, he received unemployment benefits to which he was not entitled in the amount of $1,482.50 (R-1 and R-3).

On August 9, 1984, the Department of Labor notified the petitioner that it would be conducting a hearing on August 16, 1984, concerning the unemployment benefits he had received from July 16, 1981 through October 14, 1981, while the petitioner had been employed (R-4). The petitioner failed to attend the hearing, and the Department of Labor thereafter made a determination in the case based on the record. On September 5, 1985, the Department determined that the petitioner had received unemployment benefits in the amount of $1,482.50, which he was not entitled to receive, and it imposed a fine of $296.50 for a total claim of $1,779.00 plus interest (R-1). The petitioner was never charged with any criminal offense arising out of this incident.

The petitioner's 1985 tax refund was withheld and applied to the repayment of his debt. The petitioner asserts this is the first he learned of the debt. On August 4, 1986, the petitioner entered into a repayment agreement with the Division of Unemployment to repay the debt at a rate of $100.00 per month (R-6). The petitioner began making sporadic payments of approximately $15.00 per week (R-7). In January 1988, after receiving notification of the Division's objection to the renewal of this license, the petitioner paid a lump sum payment in the amount of his outstanding balance, thus eliminating the debt. A letter for satisfaction of the debt was issued by the Department of Labor, Division of Unemployment and Disability Insurance on February 29, 1988 (P-9).

The petitioner is presently 36 years old and was 29 years old at the time of the offense. He has been married for ten years, but has no children. The petitioner is a high school graduate, and he completed two years of college in the 1970s. He completed two courses of instruction - one in blackjack and one in craps - in 1980. He is not active in any charitable, social, community or fraternal organizations, and he is not active in any church. In July 1987, the petitioner became employed as a craps dealer at Trump Plaza Hotel and Casino where he is presently employed. The petitioner has worked in the casino industry for nearly eight years. He has been an average to above average employee (P-3, P-4 and P-5).

R. Thomas Garrett of Piscataway, New Jersey testified as a character reference on behalf of the petitioner. Mr. Garrett was a school teacher of the petitioner and has known the petitioner for 25 years. Mr. Garrett testified that the petitioner has a good character, is well trusted, and tries to improve himself. He is "self-suffering" and a persistent achiever. The petitioner's mother died at an early age, and the petitioner and his six brothers and sisters were raised by his grandmother. The petitioner, being one of the oldest siblings, helped his grandmother raise the younger children. He also helped his grandmother financially. The petitioner also helped two of his younger siblings relocate to and get established in Atlantic City.

The petitioner submitted nine documents in his behalf, including a letter of recommendation written by Michael Booker, pit boss at Harrah's Marina Hotel Casino. Mr. Booker wrote the petitioner "has demonstrated that he is responsible, dependable and a very honest human being. James is also an excellent family provider and a person that I am honored to have as a friend" (P-2).

The Division attempted to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. As a result of my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses during both the hearing and my review of the record, I am skeptical of the petitioner's credibility. At several points during the hearing, the petitioner asserted that he went on unemployment after being "laid off" from Harrah's in January and that he was already on unemployment when he began working at Playboy (see May 24, 1988 transcript pages 15, 16, 31, 32 and 33). In fact, the petitioner did not apply for unemployment until two and one-half months after beginning his employment at Playboy (R-1, R-2, R-8 and R-9). While the petitioner did admit his misconduct, the chronology of the events materially affects the seriousness of the offense. Accordingly, I am skeptical of the petitioner's testimony.

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FINDINGS OF FACT

1. On or about November 3, 1980, the petitioner became employed at Harrah's Marina Hotel Casino.

2. On February 25, 1981, the petitioner was terminated from his position at Harrah's for his failure to obtain a casino employee license from the Commission.

3. On March 30, 1981, the petitioner became employed at the Playboy Hotel and Casino. The petitioner retained this employment until he was "laid off" on May 29, 1987, due to staffing cutbacks.

4. On July 16, 1981, the petitioner filed a claim for unemployment benefits with the Division of Unemployment representing that he had been "laid off" from Harrah's and was still unemployed at that time. Based upon this representation, the petitioner was determined to be eligible for benefits in the amount of $93.00 per week.

5. Between July 16, 1981 and October 12, 1981, the petitioner failed to disclose his employment to the unemployment office and he wrongfully received unemployment benefits in the amount of $1,482.50 to which he was not entitled.

6. The Department of Labor made a demand for repayment on the petitioner in the amount of $1,779.00, reflecting the $1,482.50 overpayment and a $269.50 fine.

7. The petitioner has made full restitution and has satisfied his debt.

8. At the time of the false claim, the petitioner was 29 years of age, was married, and was behind in paying for his ordinary living expenses.

9. The petitioner is currently 36 years of age.

10. The petitioner is not involved in any community groups or activities.

11. The petitioner is remorseful and has not been involved in any other criminal conduct.

12. The petitioner is employed at the present time as a dealer floorperson at Trump Plaza. He has been an average to above average employee in the casino industry for the last seven years.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978 c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> ....
>
> N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> ....
>
> N.J.S. 2C:21-4a (falsifying or tampering with records);
>
> ....
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State;

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

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request, therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

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

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of $500 between July 16, 1981 and October 14, 1981 inclusive while he was employed by the Playboy Hotel and Casino constitutes a violation of N.J.S.A. 2C:20-4, and that his failure to disclose his employment on his application to the Division of Unemployment constitutes a violation of N.J.S.A. 2C:21-4a, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b. Prevents another from acquiring information which would affect his judgment of a transaction; or

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[1] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during his testimony, that he knowingly received unemployment benefits to which he was not entitled from the New Jersey Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(a), the offense constitutes a crime of the third degree.

[1] N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

N.J.S.A. 2C:21-4, Falsifying or tampering with records, provides in pertinent part:

> a. Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

The Division established that the petitioner applied for unemployment benefits. Based upon this application, the petitioner was determined to be eligible for unemployment benefits. The Division further established that when the petitioner applied for unemployment benefits, he was in fact employed at Playboy, and therefore was ineligible to receive unemployment benefits. I therefore **CONCLUDE** that the petitioner either consealed his employment from the Divison of Unemployment or made a false statement on his application for unemployment benefits, to wit: he was not then employed, with the purpose to deceive the Division of Unemployment Compensation in order to wrongfully and unlawfully collect unemployment benefits to which he was not entitled. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:21-4a.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offenses committed by the petitioner are disqualifying offenses under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

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

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

First, Mr. Wheeler is a casino employee and is employed as a craps dealer and a blackjack and craps floorperson. As such, he does have direct responsibilities for actual gaming activities and does have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, over a fourteen-week period during which he was employed in the industry. He also committed a violation of N.J.S.A. 2C:21-4a, Falsifying or tampering with a record, in order to receive public funds. Because the offenses are listed disqualifiers under section 86c(1) and reflect a fraud upon the State in order to receive public funds, they are very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a licensee employed in the industry knowingly committed a theft of public monies to which he was not entitled. This was not a case where a person was "laid off," lawfully began collecting unemployment, and then failed to timely terminate the benefits upon obtaining new employment. In this case, the petitioner was employed in his new job two and one-half months before filing for unemployment. This evidences a purposeful and knowing theft and fraud committed upon the State and a total disregard for society. Moreover, the petitioner did not experience any emergencies which might mitigate the seriousness of the offense. He was merely behind in paying his normal living expenses. Accordingly, the totality of the circumstances underlying the incident reflects that this was a very serious offense.

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Fourth, the petitioner's misconduct occurred from mid - July 1981 until mid-October 1981, when it ceased.

Fifth, the petitioner was 29 years of age at the time of the offense. I do not believe that immaturity was a factor in this case.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, there were no pressing social conditions which contributed to the offense. The petitioner was merely behind in paying his normal living expenses. He solved his dilemma but perpetrating a fraud upon the State and stealing public monies.

Eigth, the petitioner has made few, if any rehabilitative efforts. He has not advanced his education. He is not involved in any community, fraternal, social or charitable oranizations. He does not attend church. He merely goes to work, and goes home and watches television and sports. He has worked in the casino industry for seven years and has been an average to above average employee. He has helped his family. The petitioner has expressed remorse for his misconduct. While I feel there is little likelihood of a repetition, there is scant evidence of any affirmative acts by the petitioner in order to establish his rehabilitation.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Wheeler was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved

by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, at 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296

It is apparent that the petitioner's misconduct was aberrant and that he is usually a person of good character, honesty and integrity. I, however, question his testimony and his credibility in this proceeding. The misconduct did not involve his licensed employment; however, there were no circumstances to mitigate the seriousness of the misconduct. The petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed acceptably within the casino industry during the past seven years, is married, and has cared for his family in a commendable manner. I, however, question whether the petitioner has earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Mr. Wheeler is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

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

DISPOSITION

It is **ORDERED** that the application of James Wheeler for the renewal of a casino employee license be **DENIED.**

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

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

October 31, 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11-2-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 3 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Promotion to full-time status at Trump Plaza Hotel and Casino, effective February 1, 1988

P-2 Letter of Michael Booker, pit boss, Harrah's Marina

P-3 Atlantis Casino and Hotel Floorperson/Boxperson Evaluation Form, dated January 1, 1987

P-4 Atlantis Casino and Hotel Floorperson/Boxperson Evaluation Form, dated December 15, 1985

P-5 Letter of Patrick G. Laman, pit boss, Harrah's Marina Hotel Casino, dated February 25, 1981

P-6 Letter of appreciation from William J. Girgash, vice-president, APCOA, dated October 5, 1978

P-7 Letter of employment from Walter Snopeck, manager, APCOA-Newark International Airport, dated November 18, 1976

P-8 United Community Corporation Scholarship Award

P-9 Notice of satisfaction of debt, dated February 28, 1978

For the Respondent:

R-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund on Unemployment Benefits and Imposition of Penalty Disqualification Because of Willful Misrepresentation, re: James Wheeler, mailed September 5, 1985

R-2 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record

R-3 Schedule of Overpayments

R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated August 9, 1984

R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: James Wheeler, as of August 11, 1982

R-6 Letter, dated August 4, 1986, from the Division of Unemployment and Disability Insurance to the petitioner approving an installment repayment agreement

R-7 New Jersey Department of Labor - LOOPS Claimant Inquiry, dated June 5, 1987

R-8 Letter of Anne Dalessandro, licensing supervisor, Atlantis Casino Hotel, dated May 27, 1988

R-9 Letter of Joyce Fairbrother, personnel specialist, Harrah's Marina, dated May 27, 1988, with attachments

WITNESSES

For the Petitioner:

James Wheeler, the petitioner
R. Thomas Garrett

For the Respondent:

James Wheeler, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-27
OAL DOCKET NO. CCC 8216-87
LICENSE NO. 63560-21
ORDER NO. 88-47-3

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

Complainant, :

ORDER

v. :

ANGELINA B. WILLIAMS :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission recommending that the respondent's casino employee license be revoked; and the Commission having considered the entire record of these proceedings at its public meeting of November 30, 1988

IT IS on this 28th day of February 1989, ORDERED that the initial decision is rejected for the following reasons:

> There is insufficient evidence in the record to support the finding that the respondent committed the disqualifying offense of theft by unlawful taking contrary to N.J.S.A. 2C:20-3(a).

ORDER NO. 88-47-3

IT IS FURTHER ORDERED that the Division's complaint for revocation of the respondent's casino employee license is dismissed for the reason cited above and for the further reasons noted on the record of the meeting of November 30, 1988.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8216-87

AGENCY DKT. NO. 87-27

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
ANGELINA B. WILLIAMS,
Respondent.

James Armstrong, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

William J. Polistina, Esq., for respondent

Record Closed: September 13, 1988 Decided: October 31, 1988

BEFORE **RICHARD J. MURPHY, ALJ:**

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission on August 1, 1986, seeking revocation of respondent's casino employee license after she was arrested and charged with theft by unlawful taking of $250 in coins from a change booth at Harrah's Marina Hotel/Casino in which she was working as a cashier. She denied the theft but was admitted into the pretrial intervention program and made restitution of the $250. The theft charge was dismissed. The matter was referred to the Office of Administrative Law for hearing as a contested case on December 11, 1987, and a prehearing conference was held on February 11, 1988. A

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plenary hearing was held on April 28, 1988, in Longport, New Jersey.[1] On June 17, 1988, the Division was ordered to produce an additional witness but a hearing scheduled for August 30, 1988 was adjourned when neither the witness nor respondent appeared. The hearing was continued and completed on September 13, 1988. At issue is whether the respondent's licensure is inimical under N.J.S.A. 5:12-86c2,g, including the factor of her rehabilitation, and whether she has established the good character, honesty, and integrity required by N.J.S.A. 5:12-89, a and 90 b.

FACTS

The following facts are not in dispute. The respondent, Angelina B. Williams, is the holder of casino license number 36560-21 and was employed by Harrah's Marina Hotel/Casino as a slot cashier until her termination on June 8, 1986, following her arrest on casino premises for theft by unlawful taking. She was indicted by the Atlantic County Grand Jury for violating N.J.S.A. 2C:20-3a and specifically charged with unlawfully taking and exercising control over $250 of coins from the Harrah's Marina Hotel/Casino while in her capacity as a cashier. She applied to the pretrial intervention program (PTI) but was initially rejected because of her refusal to admit any wrongdoing (R-9). In January 1987, she was admitted to PTI after agreeing to make restitution for the missing money, although she did not admit stealing the $250. The charges were dismissed after successful completion of the pretrial intervention program on August 27, 1987. Following that, on November 9, 1987, the Casino Control Commission vacated an earlier order suspending respondent's casino employee license. There is no dispute as to the above facts, and I so **FIND.**

There is considerable dispute as to exactly what happened in the change booth on June 8, 1986. The Division submitted a video tape recording of the respondent's conduct as a cashier in a coin booth at Harrah's Marina, and respondent stipulates as to the accuracy of the tape, though she disputes the Division's interpretation of it (P-1). At the time of the incident in June 1986, respondent had been a cashier at Harrah's for two months and was aware that cashiers and other employees were under surveillance by video cameras (T43, 6-25). She explained that a cashier assigned to a booth has five cabinets containing different denominations of change, as well as change drawers. Three of the

[1]The forty-five day period for completion of the Initial Decision was extended from June 13 to June 20, 1988, due to the illness of the judge.

cabinets are generally located in front of the cashier and two to the back. The fourth cabinet located in the front on the far right is normally allocated to another cashier who functions as the "breaker," coming in periodically to give the other cashier a break from duties. The "breaker" also has two cabinets in the back of the booth.

Respondent testified that, on the day of her arrest, June 8, 1986, she knew something was "funny" because she was placed in a booth other than the one in which she had been working the day before and, more significantly, the breaker, who would normally come to the booth only when giving her a break, was working along side of her to her right in the booth. The video tape of the incident (P-1) shows the respondent in the booth to the left making change and performing other functions such as accepting bus coupons and the like. She can also be seen going into the first and second cabinets directly in front of her (from the left), as well as one cabinet in the back. Another employee, Robert Leap, can also be seen in the booth in front of cabinets three and four. At approximately 4:25 p.m. on June 8 (marked as 16:25:36 on P-1), Leap left the booth without locking cabinet three. Shortly after Leap left the booth, Williams opened the third cabinent (from the left) and looked in (P-1 at 16:26:15). The tape next shows the respondent looking around the outside of the booth and then knocking on the far left window of the booth and speaking to someone outside of the booth (P-1 at 16:26:26). Williams claims, and the Division does not dispute, that she knocked to get Leap's attention and told him that his cabinet was unlocked and thus he should return to the booth to secure it. The video next shows the respondent opening cabinet number three and removing a can of coins, which she then placed in the first cabinet on her left. Shortly after this, Leap can be seen returning to the booth at approximately 16:27:44 and locking cabinet four on the far right. He did not at this time enter or lock cabinet three. Later in the tape, respondent can be seen locking the first two cabinets on the left and one in the back, but not the third cabinet (P-1 at 17:11:42 to 48).

At the hearing on September 13, 1988, the Division produced Robert Leap, and counsel for the respondent consented to proceed with the hearing despite the respondent's absence. (As indicated above, the matter had previously been scheduled for August 30, 1988, and respondent did not appear on that earlier date despite having received notice). Leap testifed that he had previously worked as a cashier at Harrah's and had been on the job less than a month on June 8, 1986. On that date, he was working as a cashier in a

change booth with the respondent. He explained that, normally, only one cashier works in a booth but on this occassion he was assigned to work with respondent because he was a new cashier and still learning the ropes. He denies that he was part of any plan to monitor the respondent's conduct and states that he had no suspicions of her. Leap states that he was assigned as a cashier on the right side of the booth and had the keys to the two cabinets on the right front of the booth, which are identified as numbers three and four. He states that the breaker normally works on the left side of the booth and uses the cabinets on that side, as well as one in the back. On June 8, 1986, respondent was working as a cashier on the breaker side of the booth to the left and had keys for the cabinets on that side. Leap viewed the video tape and confirmed that he was depicted in the booth on the right side. He stated that the tape showed him leaving the booth without locking cabinets three and four and that the respondent thereafter knocking on the window of the booth in an effort to signal another employee to advise Leap to return to the booth, which he did. Leap states that the tape shows the petitioner taking something out of cabinet three and placing it in cabinet 1 at approximately 16:25:44. The tape next shows Leap returning to the booth and locking and checking his cabinets and again leaving on break. Leap stated that after the break he returned and found that respondent had dropped a number of bills on the floor and was in the process of cleaning this up. Leap stated that the respondent had not advised him that she planned to take coins from cabinet three and that the normal process was to obtain additional coins from the booth supervisor. At the end of the shift, Leap found that his cabinets were short some $500. He stated that, in his limited experience, that shortfall was unusually large. On prior occasions, he had only been short as much as $50. Leap has no explanation as to the whereabouts of the approximately $250 uncounted for, beyond the $250 that respondent was charged with unlawfully taking.

Detective Joseph Eden of the New Jersey State Police Casino Enforcement Section testified that he was called by the surveillance section of the Casino on June 8, 1986, and, after viewing the tape, questioned the respondent. He stated that she admitted removing the can of coins from the breaker's cabinet but said she had no particular reason for doing so and did not intend to steal the money. Detective Eden also stated, and the respondent did not dispute, that Leap's count of cash was $530 short and the respondent's count of cash after her arrest was $5 over. The detective suspected that the

respondent might have sold the coins to a patron and pocketed the cash, but did state that it was not unusual for cashiers to come out short or over their beginning cash count. No search of the respondent was conducted.

The respondent admitted at the hearing that she removed the can of coins from cabinet number three, but claimed that she believed this to be her cabinet and not Leap's and did so merely for convenience and ease in performing her job. She denied selling the coins or intending to unlawfully take them from the casino. Williams does not recall if she was given a key to cabinet three and cannot remember locking it. She had no explanation as to the shortage of $530 in the breaker's cash. During her prearraignment interview on November 5, 1986, the respondent denied the charge of having taken $250 from the cabinet of Robert Leap and placing the same in her cabinet and, because of her claim of innocence, she was initially denied admittance to pretrial intervention (R-9). She later gave the following statement as a condition to entering PTI:

> I, Angelina Williams, agree to replace to Tropicana [sic] the $250 which I am alleged to have removed from Robert Leap's breaker drawer. I would, however, note that it was never my intent to deprive Tropicana [sic] of the money. I was merely performing a transfer in order to more efficiently perform my job. The video which shows me taking the coins out of the cabinet also shows that when I noticed the cabinet was opened I motioned to Robert Leap to return to lock his drawers. (R-11).

On the basis of the evidence submitted, I make the following findings of fact:

1. That the respondent was assigned as a cashier to change booth number one at Harrah's Marina on June 8, 1986, and was working in the booth with one Robert Leap, who was also working as a cashier.

2. That the respondent was working on the left side of the booth aware that she was subject to surveillance by video camera in the booth;

3. That the respondent was assigned and had keys for two cabinets in the left front of the change booth and one to the rear and that Leap had keys to two cabinets in the right front (identified as cabinets three and four) and two to the rear;

4. That Leap left the booth at the times indicated on the tape and was advised by the respondent that he had left without locking cabinets three and four;

5. That, before Leap returned to lock the cabinets, the respondent removed a can of $250 in coins from cabinet number three and placed them in cabinet one to the far left of the booth;

6. That after the respondent's arrest, the amount of cash in her drawer was $5 over and the amount of cash in the Leaps drawer was $530 short;

7. That the respondent was accepted into pretrial intervention, despite her denial of any criminal intent, and made restitution of the missing $250.

Besides the charge of theft which was dismissed after respondent entered the pretrial intervention program, she has no other criminal record. She stated that she agreed to enter the pretrial intervention program on the advice of her attorney and as she was unable to bear the cost of a trial. Ms. Williams also submitted a number of character letters from friends, all of whom attested to her honesty and reliability (R-1 through R-8).

ISSUES

The issues, as framed by the Prehearing Order, are:

1. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.A.C. 5:12-86c2 because she is alleged to have committed a violation of N.J.S.A. 2C:20-3, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g;

2. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act;

3. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5;12-89b2 as incorporated within section 89b.

DISCUSSION AND CONCLUSIONS OF LAW

Under the Casino Control Act, a person seeking to receive or retain a casino employee license must demonstrate that he or she is not disqualified under N.J.S.A. 5:12-86 and, further, that he or she possesses the required reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b, 90b. Beyond the enumerated offenses which can serve as the basis for disqualification under section 86, the Casino Control Commission may disqualify a licensee for any other offense which indicates that licensure of the applicant would be "inimical" to the policy of the Act and to casino operations even if such conduct has not or may not be prosecuted under the criminal laws of this state. See, 86c(2), g. In determining whether licensure would be inimical, the Commission must consider the notion of rehabilitation before concluding that any given offense is inimical under the Act. See, Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986). These factors of rehabilitation are equally relevant in determining whether respondent possesses the good character, honesty and integrity required for licensure under N.J.S.A. 5:12-89,90b. See, In re the matter of Application of Horizon Air, Inc., for a Casino Service Industry License, decided September 1, 1988 (Agency Dkt. no. 87-CSI-10). The factors to be considered in assessing rehabilitation under the inimical analysis are similar to those set forth in the statute under section 90h.

Before considering factors of rehabilitation, it is necessary to determine whether the respondent committed acts that would constitute a disqualifying offense despite the fact that she was not prosecuted. The Casino Control Act requires disqualification of applicants who have commmitted offenses which indicate that licensure of the applicant would be inimical to the policy of the Act and to casino operations, even where those Acts are not prosecuted. See, N.J.S.A. 5:12-86c2,g. Respondent denies that she stole coins from the change booth in which she worked on June 8, 1986. She concedes that the tape shows her taking coins from cabinet three and placing them in cabinet one in Leap's absence but claims that she was unsure as to why she did this and was possibly confused as to which cabinets were assigned to her as a cashier. She was aware that she was subject to video surveillance at the time. She also states that her actions in signalling Leap to return to the booth to lock his cabinets are consistent with her claim of innocence to the charge of theft by unlawful taking. Although she denies having unlawfully taken the $250, she made restitution of that money through the pretrial intervention program and was

spared prosecution. On the basis of the finding of facts made above I **CONCLUDE** that respondent committed the acts of theft by unlawful taking as charged, notwithstanding the fact that she was not prosecuted for this conduct. This conclusion is based on the clear video tape evidence, as well as Leap's more believable testimony.

In assessing the factors of rehabilitation to be considered in determining whether licensure would be inimicable, the Commission must consider the factors set forth in N.J.S.A. 5:12-90h:

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

The nature of duties of cashier are among the most sensitive on the casino floor, even though they do not involve gaming per se (factor 1). The offense of theft by unlawful taking when charged against a cashier is a highly serious offense that threatens the security and financial integrity of the casino gaming operations (factor 2). The circumstances under which the June 1986 occurred do not reflect any mitigating elements, although the respondent claims lack of criminal intent or confusion (factors 3 and 4). (I neglected to determine the respondent's age at the time of the offense, but she appears to be in her late 20's factor 5). The offense itself was isolated and not repeated one, which is in the respondent's favor (factor 6) but she cites no social conditions which may have contributed to the offense (factor 7). She offers, as rehabilitation, her agreement to repay the $250 as part of PTI although she denies having intentionally stolen the money. Her current employment with Financial Exchange in Pennsylvania involves giving out welfare checks and food stamps (factor 8). On the basis of the highly serious

nature of the offense (factor 2) and absence of any persuasive mitigating factors (factors 3 and 7) or substantial evidence of rehabilitation, I **CONCLUDE** that the licensure of the applicant would be inimical to the policy of the Casio Control Act and to Casino Operations under N.J.S.A. 5:12-86C2,g notwithstanding the fact that those Acts were not prosecuted. It is hard to imagine anything more inimical to the policies of the Act and casino operations than theft by casino employees of funds entrusted to them.

I further **CONCLUDE** that respondent has failed to establish by clear and convincing evidence the good character, honesty and integrity required for licensure under N.J.S.A. 5:12-89,90b. This conclusion is based on the respondent's commission of an inimical offense as discussed above.

DISPOSITION

On the basis of the above finding of facts and conclusions of law, it is **ORDERED** that the casino employee license of Angelina B. Williams is revoked.

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

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

Oct. 31, 1988
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

10-31-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 3
DATE

OFFICE OF ADMINISTRATIVE LAW

ct

WITNESS LIST

For the petitioner:

Detective Joseph Eden
Robert Leap

For the respondent:

Angelina B. Williams
Steven Yearword

EXHIBIT LIST

P-1	Video tape of June 8, 1986
P-2	Indictment
P-3	Order of Dismissal
R-1	Letter of character reference from Irene Canese
R-2	Letter of reference from Vincent Gooding
R-3	Letter of reference from James Spicer
R-4	Letter of reference from Carolyn Jones
R-5	Letter of reference from William S. Williams
R-6	Letter of reference from Ernest Dogley
R-7	Letter of reference from James Cole
R-8	Letter of reference from Rita Angiolillo
R-9	Plenary Rejection Notice from PTI, dated November 14, 1987
R-10	Letter of December 3, 1986, from respondent's counsel to PTI
R-11	Letter of Enrollment in PTI, dated January 8, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-255
APPLICATION NO. 70419-22
REGISTRATION NO. 26697-40
OAL DOCKET NO. CCC 4729-88
ORDER NO. 89-2-11

APPLICATION OF RONNIE L. WILLIAMS

FOR A CASINO EMPLOYEE LICENSE ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 11, 1989,

IT IS on this 17th day of January 1989, ORDERED that the initial decision is adopted; and

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

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

IT IS FURTHER ORDERED that this denial shall not affect Ronnie L. Williams' current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4729-88

AGENCY DKT. NO. 88-EA-255

RONNIE L. WILLIAMS,

Petitioner,

v.

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

Respondent.

Ronnie L. Williams, petitioner, pro se

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

Record Closed: November 7, 1988 Decided: November 30, 1988

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission on April 22, 1988, objecting to the issuance of a casino employee license to Ronnie L. Williams, the petitioner. Mr. Williams requested a hearing and the matter was transmitted to the Office of Administrative Law on June 27, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Administrative Law Judge Edgar R.

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Holmes on September 1, 1988. At that time the parties agreed that the issues in this matter are:

a. Whether the petitioner, with specific reference to his record of arrest, has failed to reveal any facts material to qualification or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for his casino employee license within the meaning of N.J.S.A. 5:12-86b and N.J.S.A. 5:12-90e.

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

After the prehearing conference, the matter was transferred to the undersigned for purposes of holding the hearing and rendering an initial decision. The hearing took place on November 7, 1988, at the Brigantine Municipal Building in Brigantine, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

Mr. Williams has a casino hotel registration and on January 6, 1986, he filed an application for a casino employee license (R-1). According to Mr. Williams, a representative of the Casino Control Commission helped him fill out this application and in response to question no. 16, dealing with criminal arrests and convictions, this person stamped "does not apply" since Mr. Williams denied having a criminal record.

Agent Daniel Keitt, an investigator employed by the Division, was assigned to investigate Mr. Williams' qualifications for a casino employee license. As part of his investigation, Mr. Keitt contacted the FBI, the State Police and the Atlantic City Police Department and he obtained criminal information sheets regarding Mr. Williams from all three agencies (R-2, R-3, R-4). After further investigation, Mr. Keitt determined that the FBI sheet contains some information which is not applicable to the petitioner but relates to criminal charges filed against another person or persons with similar names. Based on his investigation, Mr. Keitt determined that the respondent has the following criminal record:

ARREST DATE	CHARGE	DISPOSITION
09-21-59	Assault & Battery, Disorderly Person (Juvenile offense)	Annandale Reformatory
05-05-61	Possession of Stolen Property	four months
02-02-62	Consumption of Alcohol	30-day suspended sentence
08-05-62	Attempted Robbery	No bill
07-22-63	Atrocious Assault & Battery	Dismissed
10-24-66	Assault & Battery	Convicted
04-26-67	Assault & Battery	Not Guilty
05-03-70	Armed Robbery	Guilty
05-15-75	Uttering Forged Instrument	Guilty

As to the 1970 armed robbery offense, the petitioner pled guilty and was sentenced to three to five years in jail (R-5).

After obtaining the information regarding Mr. Williams' criminal record, Mr. Keitt interviewed the petitioner on April 13, 1987. At that time, Mr. Keitt read to the petitioner question no. 16 as it appears on the application form and asked the petitioner whether he was ever arrested and/or convicted. The petitioner answered in the negative. Mr. Keitt repeated the question and asked the petitioner if he understood it. Mr. Williams stated he understood the question and again answered in the negative. After he was confronted with the nine arrests listed above, the petitioner admitted that he was arrested on three occasions, and alleged that he had forgotten about the other arrests, especially those that did not result in a conviction. The petitioner was aware of his 1970 armed robbery arrest and that he had been incarcerated for this offense. The petitioner told Mr. Keitt that he did not list these criminal offenses since they all occurred more than ten years ago and he no longer thought they were "significant."

At the hearing, Mr. Williams stated that the question regarding his criminal record was an invasion of his right of privacy, and he did not admit that he had a criminal record since it would prevent him from obtaining a job. Mr. Williams stated that his criminal activities occurred when he was young, that they were part of his growing process, and that he is now an adult and no longer engages in such activities. Mr. Williams feels that he has already paid for his past crimes and to reveal this information to

potential employers today would be equivalent to paying again for his past mistakes.

Mr. Williams represented that he is a good worker (P-1) and there is no evidence in the record to dispute this representation. He worked as a casino maintenance person for one and one-half years for Resorts International Hotel and Casino (Resorts). On September 1, 1988, he had to leave this position because of the Division's recommendation that he not be granted a casino employee license. The petitioner is currently working for a private company in the Atlantic City area as a maintenance porter and he held this job while he was working for Resorts. Mr. Williams represents that he would never have been given these positions if the employees were aware of his prior criminal record.

In addition, Mr. Williams indicated that he had done casino maintenance work, without a casino employee license, at Bally's Park Place Hotel and Casino and Playboy Hotel and Casino, while employed by a service company licensed by the Casino Control Commission.

CONCLUSIONS OF LAW

Deputy Attorney General James J. Armstrong, on behalf of the Division, argued that the Division has established a statutory disqualification pursuant to N.J.S.A. 5:12-86b. This statute provides that a disqualification exists where the applicant fails 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."

In addition, Mr. Armstrong argued that Mr. Williams' failure to disclose his criminal record both on his written application and during the oral interview with Mr. Keitt pervents him from establishing that he has the necessary good character, honesty and integrity necessary for licensure pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

Based on Mr. Williams' admission that he intentionally denied certain arrests and convictions since he felt that they would adversely affect his chances to obtain a casino employee license and a position in a casino, I agree with the Division's argument and I **CONCLUDE** that the Division has established a statutory disqualification pursuant

to N.J.S.A. 5:12-86b. It has been established that the failure to disclose is an automatic disqualification, if it is intentional and not inadvertent, Tufi v. Division of Gaming Enforcement, 7 N.J.A.R. 101, Millet v. Division of Gaming Enforcement, 8 N.J.A.R. 579. In this matter, there is no question that Mr. Williams intentionally did not reveal at least some of his arrests and convictions.

Although Mr. Williams is convinced that revealing his criminal record would result in the denial of his casino employee license application, the converse is probably true. If Mr. Williams had revealed his criminal record he probably could have shown rehabilitation, pursuant to N.J.S.A. 5:12-90h, in view of his representations about his life and the fact that his criminal record is more than ten years old. However, the failure to reveal his criminal record is a statutory disqualification and the statute governing rehabilitation does not apply to this type of a disqualification.

Further, I agree with Mr. Armstrong's argument that the petitioner's intentional denial of a criminal record forcloses his ability at this time to show that he is a person of good character, honesty and integrity as required for licensure pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the petitioner's application for licensure as a casino employee be **DENIED.**

It should be noted that under current law a person does not have to hold a casino employee license to work as a maintenance person in a casino so long as that person does not enter restricted casino areas, N.J.S.A. 5:12-7, and restricted casino areas are defined by the law to include only a limited portion of the casino, N.J.S.A. 5:12-43.1.

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

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

November 30, 1988
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

12-2-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 5 1988
DATE

Ronald L. Parker K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

1671

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Letter from David P. Moltane, Sr., servicemaster supervisor, dated August 9, 1988

For the Respondent:

R-1 Personal history disclosure form - 2A, signed by Ronnie L. Williams, dated January 6, 1987

R-2 Request for criminal history record information regarding Ronnie L. Williams and the report of the Federal Bureau of Investigation

R-3 Request for criminal history record information regarding Ronnie L. Williams and the report of the New Jersey State Police

R-4 Information regarding the criminal record of Ronnie L. Williams obtained from the Atlantic City Police Department

R-5 Information obtained from the Atlantic County Superior Court criminal record file regarding the 1970 armed robbery conviction of Ronnie L. Williams

WITNESSES:

For the Petitioner:

Ronnie L. Williams

For the Respondent:

Agent Daniel Keitt

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-9
AND 87-CSI-9
APPLICATION NOS.49961-21
AND 1540-70
OAL DOCKET NOS. CCC 5188-88
AND CCC 6310-87 (ON REMAND)
ORDER NO. 89-9-11

APPLICATIONS OF CLIFFORD WONG AND
CLIFFORD C. F. WONG, INC.

ORDER

This matter having been remanded to the Office of Administrative Law; and the administrative law judge having filed an initial decision concluding that Clifford Wong and Clifford C. F. Wong, Inc. had abandoned their respective applications for licensure; and the Commission having considered the entire record of these proceedings at its public meeting of February 22, 1989,

IT IS on this 8th day of March 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the applications of Clifford C.F. Wong, Inc., for a junket enterprise and casino service industry license and of Clifford Wong for a junket representative and casino employee license are denied based upon:

1. information set forth in the Report on Asian Organized Crime connecting Mr. Wong with a criminal organization involved in illegal gambling, extortion and heroin trafficking;

2. the ALJ's finding that Mr. Wong committed the offense of unsworn falsification to authorities in violation of N.J.S.A. 2C:28-3, which is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and -86(g); and

3. the failure of Clifford Wong and Clifford C. F. Wong, Inc., to establish by clear and convincing evidence their qualifications for licensure pursuant to 86(a), 89(b), and 102.

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

IT IS FURTHER ORDERED that Clifford Wong, Inc., is prohibited from engaging in any future business with any applicant for or holder of a casino license or with any agent or employee acting on behalf of an applicant for or holder of a casino license until further order of the Commission.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 5188-88
(ON REMAND - CCC 6310-87)
AGENCY DKT. NOS. 88-EA-9 & 87-CSI-9

CLIFFORD C.F. WONG, INC.,
AND CLIFFORD WONG,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

No appearance by or on behalf of petitioner

Mitchell A. Schwefel, Assistant Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 23, 1988 Decided: January 5, 1989

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

This matter was originally tried before this judge in 1987. An Initial Decision was issued on February 26, 1988. Thereafter, the Casino Control Commission remanded the matter by Order of July 13, 1988, for consideration of further evidence. The matter was scheduled for hearing in November 1988, at which time Mr. Wong was to have been represented by the law firm of Brown & Michael. The matter was then postponed and hearing scheduled for December 13, 14 and 15, 1988, at the Office of Administrative Law in Trenton. Mr. Wong did not keep in touch with his attorneys. Prior to the schedule of

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hearing dates, counsel, through partner Guy S. Michael, advised the administrative law judge of a desire to be removed as counsel in view of Mr. Wong's failure to cooperate in the preparation of the case. Mr. Michael filed an affidavit dated December 12, 1988, in which he advised that attempts to reach Mr. Wong in writing and by telephone had been unsuccessful until December 6, 1988, when Mr. Wong was advised of the pending hearing dates and the necessity for preparing for them and a meeting was scheduled in Mr. Michael's office for 11 a.m. on Thursday, December 8, 1988. According to the affidavit, and representations made by Mr. Michael by telephone to the administrative law judge on December 8, Mr. Wong did not appear for that meeting. Mr. Wong was, however, advised in the telephone conversation of December 6, 1988, of the hearing dates and the necessity of being present at the hearing. On December 13, 1988, Mr. Wong did not appear at the Office of Administrative Law (OAL) nor did he make any contact with the OAL or the administrative law judge, or with his counsel, to explain his failure to appear. On December 13, 1988, the administrative law judge wrote to Mr. Wong advising him of the request by his counsel to be removed as counsel and his failure to appear at the hearing despite his having been notified of the hearing date by his counsel and indicated to Mr. Wong the requirement that he submit reasons for his failure to appear within ten days, in accordance with N.J.A.C. 1:1-14.1. Mr. Wong was also supplied with a copy of Mr. Michael's affidavit which was received by the administrative law judge after the preparation of the December 13, 1988 letter. On December 20, 1988, a letter was sent to Mr. Wong attaching the affidavit and advising him that if he was intending to reply, he should do so immediately. As of the date of this Initial Decision, no response of any kind has been received from Mr. Wong.

In view of the above, and in light of the fact that Mr. Wong was advised of the hearing dates by his counsel in the telephone conversation of December 6, 1988, and advised of the necessity to be present at the hearings, and in light of Mr. Wong's failure to appear, I **CONCLUDE** that Mr. Wong has determined not to proceed with the prosecution of his applications. It appears that he has instead failed to prosecute them in a diligent fashion. In light of the representations of counsel as contained in the affidavit, it is **ORDERED** that counsel are relieved from representation of Mr. Wong. Further, in view of Mr. Wong's failure to appear or respond to the several requests by the administrative law judge for reasons for his failure to appear at the hearing on December 13, I **CONCLUDE** that he has failed to prosecute his application and that the matter therefore must be **DISMISSED**. It is so **ORDERED**.

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

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

1/5/89
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1-9-89
DATE

William Farley
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 10 1989
DATE

Ronald J. Parker/KS
OFFICE OF ADMINISTRATIVE LAW

ds

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
CN 049
QUAKERBRIDGE PLAZA
BUILDING NO. 9
QUAKERBRIDGE ROAD
TRENTON, NJ 08625
(609) 588-6593

JEFF S. MASIN
ADMINISTRATIVE LAW JUDGE

December 13, 1988

Mr. Clifford C.F. Wong
52 Anorea Place
Staten Island, NY 10303

RE: CLIFFORD C.F. WONG, INC., AND CLIFFORD WONG v. STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT
OAL DKT. NO. CCC 5188-88
OAL DKT. NO. CCC 6310-87, ON REMAND

Dear Mr. Wong:

This morning you were scheduled to appear at a hearing before me in connection with the remand of your application before the Casino Control Commission. You did not appear. I was advised last week by your attorneys, Brown & Michael, that you had failed to cooperate and keep in contact with them and that you failed to keep an appointment for 11:00 a.m. on Thursday, December 8, 1988. Mr. Michael advised me that his firm wished to withdraw as your attorneys because of your lack of cooperation. An affidavit concerning this has been forwarded to me and I anticipate receiving it shortly.

Mr. Michael advised me last Thursday that you were aware of today's hearing. This morning he called me at 9:00 a.m. to advise that you had called him at 7:15 a.m. and that he had told you that you should either appear for the hearing today or should contact me as to your seeking an adjournment. I heard nothing from you and you did not appear. The Deputy Attorney General appeared and was present and prepared to proceed. At 10:30 a.m., I dismissed the Deputy Attorney General and advised him that I would consider that you had abandoned your case.

In accordance with the New Jersey Administrative Code Rule 1:1-14.1, you are allowed 10 days in which to contact me to advise as to any significant and legitimate reason for your failure to appear at the hearing. Since I am aware that you were advised by your attorney to either appear or contact me and you did neither, I anticipate that you were not unavoidably detained. As such, any excuse for your failure to appear must be presented in affidavit form. At the same time if you choose to respond, please advise if you have any objections to the withdrawal of your attorneys from this case.

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If I do not hear anything from you within 10 days of the date of this letter, or if your response does not provide a satisfactory explanation for your failure to appear, I will prepare an Initial Decision holding that you have failed to prosecute your application and I will dismiss it. This Initial Decision will be subject to review by the Casino Control Commission which may accept, modify or reject it.

I will hold the file for 10 days, awaiting your response as to your failure to appear.

Yours very truly,

Jeff S. Masin
Administrative Law Judge

JSM/ds

c: Guy S. Michael, Esq.
Mitchell A. Schwefel, Deputy Attorney General
Thomas F. Lowe, Assistant Director, Judicial Management & Clerk

State of New Jersey
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TRENTON, NJ 08625
(609) 588-6593

JEFF S. MASIN
ADMINISTRATIVE LAW JUDGE

December 20, 1988

Mr. Clifford C.F. Wong
52 Anorea Place
Staten Island, NY 10303

RE: CLIFFORD C.F. WONG, INC., AND CLIFFORD WONG v. STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT
OAL DKT. NO. CCC 5188-88
OAL DKT. NO. CCC 6310-87, ON REMAND

Dear Mr. Wong:

The enclosed affidavit has been submitted by Mr. Michael as part of his motion to be relieved. If you wish to respond to this motion or the abandonment of your hearing, please do so immediately as per my letter to you of December 13, 1988.

Yours very truly,

Jeff S. Masin
Administrative Law Judge

JSM/ds
Enc.
c: Guy S. Michael, Esq.
Mitchell A. Schwefel, Deputy Attorney General
Thomas F. Lowe, Assistant Director, Judicial Management & Clerk

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BROWN & MICHAEL
1125 Atlantic Avenue Suite 518
Atlantic City, NJ 08401
(609) 344-6445

STATE of NEW JERSEY vs. CLIFFORD C.F. WONG, INC.	STATE OF NEW JERSEY CASINO CONTROL COMMISSION OAL DOCKET NO. CCC 05188-88 AGENCY REF. NO. 88-EA-9 & 87-CSI-9 Civil Action AFFIDAVIT

I, Guy S. Michael, of full age, being duly sworn according to law do despose and say:

1. I am a partner in the law firm of Brown & Michael and as such I am familiar with the facts and circumstances contained herein.

2. Brown & Michael had served as counsel to Clifford C.F. Wong and Clifford C.F. Wong, Inc. in the within matter. After receiving notice of the scheduled hearing for December 13, 14, 15, 1988, this firm notified Mr. Wong of those dates for hearing both in writing and by telephone. We also attempted to discuss the presentation of the case with him and his intentions with respect thereto. Despite numerous attempts to contact Mr. Wong, we were unable to ascertain his intentions.

3. Finally, I spoke with Mr. Wong on December 6, 1988 by phone. I again advised him of the pending hearing date and the necessity for the determination regarding how and whether he would proceed. At that time we scheduled a meeting in my office for 11:00 a.m. on Thursday, December 8, 1988 in order to resolve these matters. On December 8, 1988 Mr. Wong did not appear at

that meeting and did not otherwise contact this office. Mr. Wong has outstanding legal fees due and owing to this firm.

4. I make this affidavit in support of this firm's application for relief as counsel to Mr. Wong in this matter. Representations in this respect were made to Honorable Jeff S. Masin, A.L.J. on a telephone conference call on December 8, 1988 in the presence of Mitchell A. Schwefel, Assistant Attorney General. At that time, and on the basis of these representations, Judge Masin granted this firm's Motion for withdrawal as counsel and requested that this Affidavit be filed in furtherance of that determination. A formal Order of withdrawal for Judge Masin's signature is attached hereto.

By: _____
Guy S. Michael

Sworn and Subscribed to
before me this 12th
day of December, 1988

_____
Veronica Garber
Notary Public of New Jersey

VERONICA GARBER
A Notary Public of New Jersey
My Commission Expires Dec. 21, 1991

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-445
REGISTRATION NO. 42491-40
OAL DOCKET NO. CCC 2470-88
ORDER NO. 89-9-8

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. ERVIN WYMAN, JR., Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 1, 1989,

IT IS on this 10th day of March 1989, ORDERED that the initial decision is modified to indicate that the respondent's casino employee license expired on July 31, 1985, prior to the date on which the Division of Gaming Enforcement filed its complaint in this matter and not during the period between the filing of the complaint and the hearing in the Office of Administrative Law as stated by the administrative law judge; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by the respondent, Ervin Wyman, Jr., is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2470-88
AGENCY DKT. NO. 85-445

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ERVIN WYMAN, JR.,
Respondent.

Charles Kimmel, Law Assistant, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
Erwin Wyman, Jr., respondent, pro se

Record Closed: December 9, 1988 Decided: January 18, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint on November 14, 1985 with the Casino Control Commission (Commission) seeking revocation of the respondent's casino hotel employee registration and casino employee license.

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The main ground for revocation alleged in the complaint is that the respondent was charged with theft from his casino hotel employer, contrary to N.J.S.A. 2C:20-3.

This offense, if in the second or third degree, is a disqualifying offense pursuant to N.J.S.A. 5:12-86c (1) 90e and 91b.

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted on June 3, 1988 and the issues were identified as (1) whether the respondent engaged in conduct which constitutes a statutory disqualifying offense, N.J.S.A. 5:12-86(c), (2) whether the respondent has the requisite good character, honesty and integrity for casino employee licensure, N.J.S.A. 5:12-90; (3) whether the respondent's continued licensure would be inimical to the policies of the Casino Control Act (Act); and (4) whether the respondent is rehabilitated as permitted by N.J.S.A. 5:12-90h.

A plenary hearing convened on December 2, 1988. The record was held open until December 9, 1988 to permit the respondent to submit letters evidencing his rehabilitation.

During the period between the filing of the complaint and the OAL hearing, respondent's casino employee license expired and respondent elected not to pursue licensure, only registration. It also appeared that he disposed of his criminal charges. As a result the issues were restated as follows:

A. Whether respondent was convicted of a disqualifying offense pursuant to N.J.S.A. 5:12-86c(1) and 91b.

B. Whether respondent is rehabilitated pursuant to N.J.S.A. 5:12-91d.

STATE'S EVIDENCE

The State introduced a certified copy of respondent's conviction for a violation of N.J.S.A. 2C:20-3 in the third degree. The conviction was obtained after a bench trial on April 8, 1987. The respondent was convicted of stealing $600 from his employer, Boardwalk Regency Corporation, trading as Caesars Boardwalk Regency Hotel/Casino, where he was a cashier.

DISQUALIFICATION FOUND

I **CONCLUDE** that the respondent is disqualified from casino hotel employee registration as a result of his conviction for a violation of N.J.S.A. 2C:20-3 in the third degree, a listed disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 91b.

REHABILITATION

A disqualified registrant can still maintain his registration by affirmatively showing that he is rehabilitated as permitted by N.J.S.A. 5:12-91h. The statute lists eight factors which must be considered: (1) the nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

RESPONDENT'S EVIDENCE

The respondent is 27 years old. He is unemployed. This was his first adult conviction. He has no juvenile record. He has a subsequent conviction for making a bomb threat to the Showboat Casino Hotel (not a listed statutory disqualifier). He was angry because he was removed from the premises. He also has pending criminal charges for possession of a knife.

He seeks reemployment with the casino industry because he wants to contribute to his household which consists of his girlfriend and a child.

He explained his criminal conduct as being the product of family problems and consumption of alcohol. He maintains he now knows his problems and is strong enough to overcome them.

He was unable to produce a letter from an employer. He offered instead a former employer's phone number. He did submit a letter of recommendation from his former school principal, who has known respondent for approximately 15 years. The principal says that the respondent is proud of his daughter and that he is cooperative with school authorities.

REBUTTAL

The State examined the respondent concerning his employment record in the industry. It is as follows:

Casino/Hotel	Dates of Employment	Reason for Termination
Playboy	6-15-83 to 9-26-83	No call, no show, lateness
Tropicana	8-6-84 to 8-20-84	Respondent does not remember
Caesars	6-12-85 to 8-20-85	Theft $600 (the disqualifying offense)
Trump Castle	4-10-86 to 5-10-86	No call, no show, lateness (7 times)
Claridge	9-10-86 to 10-6-86	Lateness
Showboat	7-31-87 to 9-10-87	Sleeping on duty

Respondent also thinks he worked at Bally's for approximately six months in 1982.

FINDINGS OF FACT
REHABILITATION FACTORS

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(1) The respondent last worked in the industry as a bar porter.

(2) The offense complained of is a third degree theft.

(3) The theft was from the respondent's employer, a casino hotel. He claims he did not commit any crime.

(4) The offense occurred on August 18, 1985.

(5) The respondent was 24 years old when the offense was committed.

(6) This was the respondent's first conviction. He has no other theft offenses on his record. He was convicted October 3, 1988 of a bomb threat, N.J.S.A. 2C:33-3, and he has pending weapon charges (knife).

(7) There was no evidence that social conditions contributed to the offense.

(8) The respondent is just beginning a one year probation period on the bomb threat charge. He was unable to obtain a reference from an employer although his former principal wrote a letter for him.

The respondent is not a suitable candidate for registration because he has offered little, if any, evidence of rehabilitation. He is unemployed and acquiring an arrest record. In fact, the evidence leads me to believe that he may soon become a recidivist unless he makes a more determined effort.

CONCLUSION

I **CONCLUDE** that the respondent has failed to affirmatively establish his rehabilitation as permitted by N.J.S.A. 5:12-91h.

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

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

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

January 18, 1989
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1-23-89
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 23 1989
DATE

Randall D. Fuller
OFFICE OF ADMINISTRATIVE LAW

dho

1690

WITNESS LIST

For the Petitioner:

Ervin Wyman, Jr.

For the Respondent:

Ervin Wyman, Jr.

EXHIBIT LIST

For the Petitioner:

P-1 Indictment No. 86-12-2525-B-CP
P-2 Indictment No. 88-04-0982-B-CP
P-3 Judgment of Conviction

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
1.	State of New Jersey v. Mark R. Anderson	OAL CCC 754-89 Agency 89-46	09/22/89	1
2.	State of New Jersey v. Derrick Ashcroft (See, Calmark)			64
3.	Application of Atlantic City Showboat, Inc. for renewal of its 1989 casino license (See, Drexel Burnham Lambert, Inc.)			278
4.	State of New Jersey v. Ron Aubert (See, Calmark)			64
5.	State of New Jersey v. Haig Bagerdjian (See, Calmark)			64
6.	Petition of Bally's Park Place (See, Murrell Watkins)			1044
7.	State of New Jersey v. Aaron Blake (See, Calmark)			64
8.	State of New Jersey v. Robert Blake (See, Calmark)			64
9.	Application of Arthur Block for a junket representative license (See, Application of Paul Waitze)			1008
10.	Application of Marlon E. Bradshaw for a casino employee license and State of New Jersey v. Marlon E. Bradshaw	OAL CCC 2756-89 Agency 89-EA-50; 89-103	12/07/89	12

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
11.	Application of Leon J. Branham for a casino employee license	OAL CCC 8832-88 Agency 89-EA-140	08/22/89	25
12.	State of New Jersey v. Richard P. Brown, Jr.	OAL CCC 8763-88 Agency 88-264	12/07/89	33
13.	State of New Jersey v. Donald Brumlik (See, Calmark)			64
14.	Application of Stephanie Bunch for a casino employee license	OAL CCC 7943-88 Agency 89-EA-68	08/22/89	55
15.	State of New Jersey v. Calmark Associates, L.P., Calmark Properties, Inc., Calmark Financial Corporation, Calmark Holding Corporation, Uri Sheinbaum, Joe H. Freeman, III, Donald Brumlik, Ron Aubert, Derrick Ashcroft, Joe Carey, Jim Ciontea, Mike Costa, Gerald Goldman, Bill Gould, John Huskey, Robert Loeffler, John Scott, Matt Smith, Ygal Sonenshine, Robert Weiss, Haig Bagerdjian, John Cashion, Alan Jacobs, East Shore Associates, L.P. A/K/A ESA Associates, L.P., North Shore Associates, Sanford J. Hillsberg, Robert Blake, Aaron Blake, Ronald A. Fischman, Steven Cooperman, Del Webb Corporation, and The Claridge at Park Place, Inc.	Agency 90-154	12/21/89 12/21/89 12/22/89 12/22/89	64
16.	Qualification and application for renewal of the casino key employee license of Jesus F. Campo	OAL CCC 6909-88 Agency 89-M-4	12/05/89	79
17.	State of New Jersey v. Joe Carey (See, Calmark)			64
18.	State of New Jersey v. Carnegie Delicatessen, Inc. and Francine, Inc.	OAL CCC 3459-88 Agency 88-316	10/31/89	97

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
19.	Application for renewal of the casino employee license of Thomas Caruso	OAL CCC 104-89 Agency 89-EA-263	11/20/89	135
20.	State of New Jersey v. John Cashion (See, Calmark)			64
21.	State of New Jersey v. Joseph Cavilla (See, GNOC Corp.)			379
22.	Application for renewal of the casino employee license of John P. Chambers	OAL CCC 8831-88 Agency 89-EA-190	08/28/89	146
23.	State of New Jersey v. Jim Ciontea (See, Calmark)			64
24.	State of New Jersey v. The Claridge at Park Place, Inc. (See, Calmark)			64
25.	State of New Jersey v. Richard T. Conte	OAL CCC 6657-88 Agency 89-41	09/27/89	155
26.	State of New Jersey v. Steven Cooperman (See, Calmark)			64
27.	Application of Cornell & Company, Inc. for a casino service industry license and State of New Jersey v. Charles Cornell, Cornell & Company, Inc., Cornell Lifting Services, and Cornell Crane & Hoist, Inc.	OAL CCC 5631-88; CCC 7025-88 Agency 89-CSI-5; 88-398	11/03/89 Opinion 12/19/89	163
28.	State of New Jersey v. Mike Costa (See, Calmark)			64
29.	Application of Jonathan M. Cray for a casino employee license	OAL CCC 08132-88 Agency 89-EA-15	07/07/89	234

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
30.	State of New Jersey v. Del Webb Corporation (See, Calmark)			64
31.	Application for renewal of the resident director, gaming school instructor and casino key employee licenses of Peter G. Demos, Jr. and State of of New Jersey v. Peter G. Demos, Jr.	OAL CCC 8330-88 (on remand) Agency 88-CSI-18; 88-94	09/20/89	242
32.	Security holdings of Drexel Burnham Lambert, Inc. (Application of Atlantic City Showboat, Inc. for 1989 renewal of its casino license)	PRN 139902	11/02/89	278
33.	Application for renewal of the casino employee license of Doris E. Dunston	OAL CCC 2671-88 CCC 9144-88 (on remand) Agency 88-EA-192	09/01/89 Commission Decision 9/27/89	292
34.	State of New Jersey v. East Shore Associates, L.P., A/K/A ESA Associates, L.P. (See, Calmark)			64
35.	Petitions of Elsinore Shore Associates for renewal of its plenary casino license and its casino hotel alcoholic beverage license	PRN 350801 350802	Opinion 1989	324
36.	State of New Jersey v. ESA Associates, L.P. (See, Calmark)			64
37.	State of New Jersey v. Thomas A. Evans	OAL CCC 6175-88 Agency 89-36	08/09/89	345
38.	State of New Jersey v. Daniel P. Farquharson	OAL CCC 245-90 Agency 89-152; 90-29	09/27/89	352

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
39.	State of New Jersey v. Ronald A. Fischman (See, Calmark)			64
40.	State of New Jersey v. Joe H. Freeman, III (See, Calmark)			64
41.	Application of Eubilia Jane Gayton for a casino employee license	OAL CCC 8087-88 Agency 89-EA-101	08/09/89	372
42.	State of New Jersey v. GNOC Corp., t/a The Golden Nugget Hotel and Casino, Joseph Cavilla and Donald Pors	OAL CCC 194-87 Agency 87-177	11/29/89	379
43.	State of New Jersey v. Gerald Goldman (See, Calmark)			64
44.	State of New Jersey v. Bill Gould (See, Calmark)			64
45.	Application of Gourmet Bouquets, Inc. for a casino service industry license and qualification of Armando, Irene and Christopher Tortu	OAL CCC 8084-88 Agency 89-CSI-6	12/07/89	422
46.	State v. Greate Bay Hotel and Casino, Inc., t/a the Sands (See, Thomas J. Matash)			689
47.	State of New Jersey v. Anthony R. Green	OAL CCC 8766-88 Agency 89-20	08/28/89	437
48.	Application of Stanley R. Greenberg for a junket representative license (See, Paul Waitze)			1008

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
49.	Application for renewal of the casino key employee license of Alan M. Hade	OAL CCC 114-89 Agency 89-EA-246	12/07/89	451
50.	State of New Jersey v. Harold C. Harman	OAL CCC 7405-88 Agency 86-28	11/27/89	463
51.	State of New Jersey v. Howard Hayes, Jr.	OAL CCC 00111-89 Agency 89-136	08/09/89	478
52.	Application of Robert W. Hendrickson for a casino employee license and State of New Jersey v. Robert W. Hendrickson	OAL CCC 1810-89; CCC 06213-89 (consolidated) Agency 90-EA-47; 89-225	12/14/89	495
53.	Application of Mark B. Hill for a casino employee license	OAL CCC 7948-88 Agency 89-EA-102	09/11/89	508
54.	State of New Jersey v. Sanford J. Hillsberg (See, Calmark)			64
55.	State of New Jersey v. Valerie L. Hinson	OAL CCC 896-89 Agency 88-218	11/27/89	533
56.	Application of Victoria T. Hopkins for a casino key employee license	OAL CCC 2288-89 Agency 89-EA-361	09/19/89	543
57.	State of New Jersey v. Willard C. "Bucky" Howard	OAL CCC 7549-88 Agency 88-85	12/01/89	560
58.	State of New Jersey v. Ralph E. Hunter, Jr.	OAL CCC 195-89 Agency 89-137	11/22/89	587
59.	State of New Jersey v. John Huskey (See, Calmark)			64
60.	State of New Jersey v. Alan Jacobs (See, Calmark)			64

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-46
LICENSE NO. 43387-21
OAL DOCKET NO. CCC 754-89
ORDER NO. 89-38-21

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

Complainant,

v.

MARK R. ANDERSON,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and the applicant having filed a motion for stay of the Commission's determination in this matter; and the Commission having considered the entire record of the proceedings at its public meeting of September 20, 1989,

IT IS on this 22nd day of September 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

IT IS FURTHER ORDERED that the applicant's motion for stay is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 754-89
AGENCY DKT. NO. 89-46

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARK R. ANDERSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Carmen A. Malignaggi, Esq., for respondent

Record Closed: June 27, 1989 **Decided:** July 27, 1989

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint on August 1, 1988 against Mark R. Anderson with the Casino Control Commission in which it charged that Anderson, holder of a casino employee license no. 43387-21 and then employed at the Claridge Casino Hotel as a roulette dealer had, on May 5, 1988, been arrested and charged with possession of a controlled dangerous substance, marijuana, in violation of *N.J.S.A.* 2C:35-10. The possession had allegedly occurred at the Claridge Casino/Hotel. The complaint requested that Mr. Anderson's license be sanctioned since his alleged possession of the marijuana indicated a lack of the required good character, honesty and integrity which is necessary for casino employee licensure pursuant to *N.J.S.A.* 5:12-89(b)(2), as incorporated by *N.J.S.A.* 5:12-90(b), portions of the Casino Control Act ("Act"). In addition, the complaint charged that continued licensure would be inimical to the policies of the Act and

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casino operations in New Jersey and thus continued licensure was not permitted pursuant to *N.J.S.A.* 5:12-86(c)2.

Mr. Anderson requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A prehearing was held before Honorable Beatrice S. Tylutki, ALJ on April 10, 1989. The prehearing order established issues for hearing concerning whether continued licensure was inimical because of the alleged violation of *N.J.S.A.* 2C:35-10, despite the fact that there was no conviction in the criminal courts of New Jersey, as permitted by *N.J.S.A.* 5:12-86g, and whether Anderson possessed the requisite good character, honesty and integrity for licensure. A hearing was held before Administrative Law Judge Jeff S. Masin at the Pitman Boro Municipal Court on June 27, 1989. The record closed following the hearing on that date.

EVIDENCE

The Division of Gaming Enforcement introduced various documents at the time of the hearing. These included the complaint filed against Anderson in the Atlantic City Municipal Court on May 5, 1988 by Trooper B. McCoy of the New Jersey State Police, assigned to the Division of Gaming Enforcement, which charged Anderson with possession of marijuana in violation of *N.J.S.A.* 2C:35-10. In addition, the Division offered McCoy's investigation report, P-2, which document indicates that Anderson, along with David William Snyder and Michael Francis Allar, were all arrested in the casino dealer's lounge at the Claridge Casino on May 5, 1988 by McCoy and Detective D. Jones and M. Garabics. Apparently, as a result of an investigation which had been going on for some time, the police learned of possible narcotics use in the dealer's lounge. On the date in question, Detective Jones was given a dealer's uniform and posed as a dealer on break in the lounge. At 12:25 a.m. Jones signaled the other officers, indicating that he had observed activity which would warrant an arrest. Observations by the officers showed Snyder sitting in the middle of the other accused holding a clear plastic bag with a green substance inside. Allar was holding a smoking pipe which, when it was later seized, was found to contain a green substance. Anderson was to the left of Snyder. The police entered the premises and at that point Snyder threw the bag with the vegetation on the floor and Allar hid the pipe between his legs. These were recovered and the individuals were arrested and given their Miranda rights. Interviews were conducted and all three individuals made statements implicating themselves in illegal conduct.

The Division offered, without any objection, statements signed by Anderson and purportedly by Allar and Snyder. Snyder's statement indicates that the three were sitting smoking "a bowl of pot" when the police came and Snyder "through (sic) the bag of pot behind the video machine. . ." Allar stated that "a pipe was passed to me during a break. . . at which time the police came in and confiscated him. Anderson wrote that he went to the lounge on his break and "said to Dave lit (sic) one up. He asked me if I had papers I asked around and someone gave me a pipe. Dave filled it up and lit it and passed it to me and I passed it to Mike and then you (the police) came in."

The laboratory report from the New Jersey State Police Laboratory indicated that the two specimens examined contained a trace amount of marijuana in specimen 1, which apparently was the pipe, and 6.89 grams gross weight of marijuana in specimen 2, which apparently was the plastic bag.

The Division called Mark Anderson as a witness. Anderson acknowledged that he lived in Atlantic City during the summer of 1988. He has lived in Sewell since 1961. He is presently employed as a dealer at the Claridge and has been so employed since June of 1983, dealing roulette, blackjack and mini baccarat. Anderson acknowledged knowing David Snyder and Michael Allar from work. He described Snyder as a friend of his and Allar as a "associate."

Anderson acknowledged that he worked on May 5, 1988 and that Snyder and Allar were also working that day. When asked whether he was in or about the dealer's lounge on his break, whether all three were together on May 5, 1988 shortly after midnight, Anderson attempted to invoke his right against self-incrimination under the Fifth Amendment of the United States Constitution which under New Jersey law is paralled by Rule 24 of the New Jersey Rules of Evidence. Of course, the right is not applicable to civil proceedings, *State v. Roma*, 143 *N.J. Super.* 504, 509 (Law Div. 1976). However, in order to determine whether Anderson was legitimately concerned with possible incrimination the judge questioned him as to the basis for his claim. *In Re Ippolito*, 75 *N.J.* 435, 400-441 (1978). Upon questioning by the administrative law judge and examination of the municipal court complaint which had been filed, it was determined that Anderson had been found not guilty of the charge of violating *N.J.S.A.* 2C:35-10, possession of controlled dangerous substance, by the Municipal Court on October 4, 1988. In view of the acquittal, the administrative law judge advised counsel and Mr. Anderson that it appeared that Anderson could not reasonably anticipate that answering the questions asked of

him could in any fashion incriminate him. *Rule* 24 ". . . a matter will not be held to incriminate if it clearly appears that a witness has no reasonable cause to apprehend a criminal prosecution." Although it is true that the acquittal in the Municipal Court would not constitute a bar to a finding on the civil standard of preponderance of the evidence that Anderson was in fact in possession of the marijuana, it is clear that the acquittal served as a judgment having preclusive affect upon the state's ability to again prosecute Anderson for possession of that marijuana. Under the circumstances, the judge ordered that Anderson answer the question and ruled that he could not claim the privilege in this civil matter and that there was in any case no Fifth Amendment privilege which could be asserted. In addition, the judge advised counsel and Anderson that because this administrative proceeding was civil in nature, the invocation of the Fifth Amendment, even in circumstances where a reasonable concern concerning the possibility of incrimination did exist, could still result in the judge drawing reasonable negative inferences from the invocation of the constitutional protection such as might lead to a determination that truthful answers to the questions asked would have a negative impact upon Anderson's position. *State v. Merlino*, 216 *N.J. Super.* 579, 587-588 (App. Div. 1987) *aff. o.b.* 109 *N.J.* 134 (1988). Despite these warnings and suggestions, Anderson insisted upon refusing to answer the questions concerning whether or not he was in the dealer's lounge on his break and whether all three, he Snyder and Allar, were together on May 5, 1988 shortly before midnight. However he did acknowledge that he, Snyder and Allar were arrested. He acknowledged that he was charged with possession of controlled dangerous substance and was shown and acknowledged the complaint. He acknowledged that he signed the document P-3 in evidence, his written statement. He refused to answer when questioned as to what he meant by the phrase "light one up" contained in his statement. He was asked what was lit up and he refused to answer despite again being advised by the judge that he had no basis upon which to fear incrimination and that invocation of the Fifth Amendment might impact negatively on his legal position in this administrative proceeding. He acknowledged that the reference to papers meant cigarette rolling papers. He did not recall what the pipe which was given to him looked like and again invoked the Fifth Amendment when asked what it was filled with.

During Anderson's examination his counsel acknowledged and stipulated that P-4 in evidence, the statement purportedly signed by Snyder, and P-5 in evidence, the statement purportedly signed by Allar, were in fact signed by those two individuals. Anderson then denied that he possessed marijuana.

The Division rested its case at this point. The respondent did not come to the stand to testify in his own behalf on any issues in the case, including any presentation of good character evidence.

The Division then called Anderson as a witness under the authority of *N.J.S.A.* 5:12-107(a)5. This was over objection from Anderson's counsel. The administrative law judge determined that where the Division chose to call the respondent as its own witness on its case, a right normally held by a party in a civil action who is permitted to call the adverse party, and where the Division examined the adverse party as its own witness and was then confronted with a failure by the adverse party to testify in his own behalf in his case-in-chief, 107(a)5 permitted the Division to have the unusual opportunity of recalling the adversary to the stand and subjecting the adversary to cross-examination as if the adversary had chosen to take the stand on his/her own behalf in his/her case-in-chief.

On cross-examination Anderson refused to answer whether he was arrested prior to May 5, 1988. He did however agree that he was arrested in Deptford Township on April 29, 1988. He refused to answer whether he plead guilty to possession of a prohibited weapon on October 4, 1988.

ANALYSIS

Initially, the evidence presented as to Mr. Anderson's alleged possession of marijuana on May 5, 1988 is sufficient to establish his guilt of that charge by a preponderance of the credible evidence. Whatever may have been the reasons for his acquittal in Municipal Court, where the more exacting standard of proof beyond a reasonable doubt applied, here, the evidence consisting of the police report, the laboratory report and the statements of the three arrested individuals are quite adequate to meet the Division's burden. Mr. Anderson's own statement, which is an admission against interest and therefore competent evidence, indicates that he was involved in asking Mr. Snyder to "light one up." When this is read in conjunction with Snyder's statement, which was admitted without objection and acknowledged as actually being the statement of Snyder and which explains that the gentlemen were smoking a bowl of pot, and Snyder's actions as described in the police reports and his own statement of throwing the bag of pot away in an obvious indication of guilt, such evidence clearly demonstrates that these individuals were involved in illegal possession of marijuana and were smoking it at the time that the police arrested them. Mr. Anderson presented no actual defense to this charge. In

addition, his refusal to answer questions, even if resulting from legitimate concern of possible incrimination, can and, in this case, I **FIND**, should be read against him as indicating that truthful answers would have been adverse to his interests. In view of the above, I **CONCLUDE** that Mr. Anderson did in fact possess marijuana on May 5, 1988. Such possession was in violation of *N.J.S.A.* 2C:35-10. Further, such possession, in the confines of the dealer's lounge at a casino hotel, constitutes conduct on the part of the licensee which is clearly adverse to the interests of the Casino Control Act and the gaming industry. The presence of drugs on the premises of casinos, the use of drugs by casino employees on those premises are actions which cannot be considered in the best interests of the industry or commensurate with the policy of the Casino Control Act to avoid conduct on and about the casino premises which will bring into disrepute both the industry and the regulatory process governing it. For these reasons, I **CONCLUDE** that continued licensure of Mr. Anderson would be inimical under *N.J.S.A.* 5:12-86c and therefore his license must be revoked.

In addition to the above, Mr. Anderson's conduct at the hearing in refusing to answer questions despite the fact that he was advised by the administrative law judge that he had no legitimate basis for claiming the Fifth Amendment protection in view of his acquittal on the charge appears to constitute a lack of cooperation with the investigatory process which is violative of the statute and the requirements which it places upon those who hold casino licenses. *N.J.S.A.* 5:12-80d requires that:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation, or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such a person may be denied or revoked by the commission.

In the course of an investigation of a licensee's conduct, even at the formal stage of an OAL hearing, a licensee has a general duty to cooperate and provide information concerning his or her conduct. While admittedly there are instances where an individual may choose to invoke the Fifth Amendment protection even in the face of the possibility of negative inferences being drawn from the invocation of the protection, and where it might not be all together appropriate to deem such

invocation of the Constitution as non-cooperation, where, as in this case, there appears to be no legitimate basis for invoking the Amendment's protection, one could well consider that the refusal to answer in the face of a direction by the judge that no protection can be invoked, constitutes a refusal to cooperate and a lack of cooperation violative of the requirement of section 80.

Finally, I **CONCLUDE** that Mr. Anderson's conduct, including his unwillingness to cooperate at the hearing where he had no legitimate basis for refusing to participate and cooperate, indicates a lack of sufficient good character, honesty and integrity to permit continued licensure. A casino licensee is required to establish his good character, honesty and integrity at all times by clear and convincing evidence, *N.J.S.A.* 5:12-89b(2) and 90b. The facts here do not permit a finding that Mr. Anderson has established that level of good character. Indeed, he did nothing to advance his cause on this ground, presenting neither his own testimony nor that of any other to support his character.

Based on all of the above, I **CONCLUDE** that Mr. Anderson's continued licensure would be inimical to the policies of the Casino Control Act and the interest of the casino industry and that he has failed to establish by clear and convincing evidence his continued good character, honesty and integrity, and that his refusal to cooperate by providing answers to legitimate questions in this proceeding in the absence of any legitimate invocation of the Fifth Amendment protection constitutes noncooperation and a further basis for denial of continued licensure. For all of these reasons, Mr. Anderson's casino employee license is **REVOKED**. It is so **ORDERED**.

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

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

July 27, 1989
Date

JEFF S. MASIN, ALJ

Receipt Acknowledged:

7/29/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 31 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

On behalf of petitioner:

P-1 City of Atlantic City Municipal Court Complaint S 900735

P-2 New Jersey State Police Investigation Report of Trooper B. McCoy, dated May 5, 1988

P-3 Statement of Mark Anderson

P-4 Statement of David W. Snyder

P-5 Statement of Michael Allar

P-6 New Jersey State Police Laboratory Report, Laboratory No. 86639-H, dated May 11, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-50; 89-103
APPLICATION NO. 73517-21
REGISTRATION NO. 39079-40
OAL DOCKET NO. CCC 2756-89
ORDER NO. 89-48-11

APPLICATION OF MARLON E. BRADSHAW
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

MARLON E. BRADSHAW,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of December 6, 1989,

IT IS on this 7th day of December 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2756-89
AGENCY DKT. NOS. 89-103 & 89-EA-50
(ON REMAND - CCC 7887-88)
CASINO CONTROL COMMISSION

MARLON E. BRADSHAW,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

and

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARLON E. BRADSHAW,
Respondent.

Marlon E. Bradshaw, petitioner-respondent, pro se

Ralph L. Fusco, Deputy Attorney General, for the State of New Jersey (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: September 15, 1989 Decided: 10/31/89

BEFORE LILLARD E. LAW, ALJ:

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission on August 2, 1988, objecting to the issuance of casino employee license to the petitioner. The Division also filed a complaint with the Casino Control Commission on October 11, 1988, seeking revocation of the petitioner's casino hotel employee registration. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on October 31, 1988, to be heard as a contested case pursuant to *N.J.S.A.* 52-14B-1 *et seq.* and *N.J.S.A.* 52-14F-1 *et seq.*

By notice dated January 17, 1989, the petitioner was informed that a prehearing conference on the matter was scheduled to be held at 1:30 p.m. on January 26, 1989, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. On the scheduled date for the prehearing, there was no appearance by or on behalf of the respondent. Everyone who did appear in this matter waited one hour beyond the scheduled hearing time before excused.

On February 10, 1989, Administrative Law Judge (ALJ) Beatrice S. Tylutki issued an Initial Decision-Failure to Appear dismissing the matter. On March 15, 1989, the Commission considered the Initial Decision. At that time the Commission's staff noted that the Office of Administrative Law had forwarded the notice of the prehearing conference to the wrong address. As a result, on April 10, 1989, the Commission ordered that the matter be remanded to the Office of Administrative Law for a hearing on all issues.

On June 22, 1989, a second prehearing conference was held before ALJ Steven Carnes at which, among other things, the issues to be determined were agreed upon by the parties and the hearing date of September 15, 1989, established. The matter was transferred to the undersigned. The hearing was held as scheduled and the record was closed on September 15, 1989.

ISSUES

The issues to be determined are these:

A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in *N.J.S.A.* 5:12-86c(1), to wit: *N.J.S.A.* 2C:12-1(b)1, aggravated assault.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to *N.J.S.A.* 52:12-89b(2), as incorporated in section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h and/or 91d of the Casino Control Act (Act)?

FINDINGS OF FACT

Based upon the testimony proffered at the hearing and the documents offered into evidence, I **FIND** the following **FACTS** in this matter:

Marlon E. Bradshaw (petitioner) is presently 37 years of age and the holder of casino hotel employee registration no. 39079-40. He seeks a casino employee license to be issued by the Commission; to which the Division objects, in addition to its recommendation that his present registration be revoked. The Division bases its objection and revocation request on petitioner's extensive arrest record which, be admits, is as follows:

On August 25, 1971 the petitioner was arrested by the Atlantic City, New Jersey Police Department and charged with Threat with a Gun analogous to *N.J.S.A.* 2C:11-2 and Assault and Battery on a Police Officer analogous to *N.J.S.A.* 2C:12-1. This matter was disposed of in the Atlantic City Municipal Court downgraded to Simple Assault for which petitioner was found guilty and subsequently fined $100. The Threat with a Gun charge was dismissed.

On June 7, 1972 the petitioner was arrested by the Atlantic City, New Jersey Police Department for Simple Assault and Battery analogous *N.J.S.A.* 2C:12-1. This matter was disposed of in the Atlantic City Municipal Court where the applicant was fined $100.

On September 23, 1974, petitioner was arrested by the Norfolk, Virginia Police Department for Possession of Marijuana, under 25 grams in violation of what would be analogous to *N.J.S.A.* 2C:35-10 under the New Jersey Penal Code. The charges with regard to this matter were dismissed.

On July 14, 1981 petitioner was arrested by the Atlantic City, New Jersey Police Department for Forgery in violation of *N.J.S.A.* 2C:21-1. This matter was disposed of in the Atlantic City Municipal Court were petition was found guilty of the charge, sentenced to 30 days in the County jail, which sentence was suspended and petitioner was placed on one year probation in addition to a $100 fine and $20 in court cost.

On October 5, 1983 petitioner was arrested by the Pleasantville, New Jersey Police Department for Disorderly Conduct *N.J.S.A.* 2C:33-2a and Resisting Arrest *N.J.S.A.* 2C:29-2. He pled guilty to the Disorderly Conduct charge and was fined $50. The Resisting Arrest charge was dismissed.

On November 29, 1983 petitioner was arrested by the Atlantic City, New Jersey Police Department and charged with Conspiracy to Commit Burglary, *N.J.S.A.* 2C:5-2 and *N.J.S.A.* 2C:18-2; Burglary, *N.J.S.A.* 2C: 18-2; Theft, *N.J.S.A.* 2C:20-3; and Possession of a Handgun without a Permit, contrary to *N.J.S.A.* 2C:39-5b. Petitioner was subsequently indicted by the Atlantic County Grand Jury in Indictment C-254-84B. On February 14, 1985 petitioner pled guilty to Possession of a Weapon and was sentenced to 18 months probation. All of the other charges in this indictment were dismissed.

Petitioner was last arrested by the Atlantic City, New Jersey Police Department on April 24, 1985 and charged with Possession of a Dangerous Weapon (a knife) in violation of *N.J.S.A.* 2C:39-5(d). He was subsequently indicted by the Atlantic County Grand Jury in Indictment 85-05-0761B. The charges with regard to this incident were dismissed as a result of a plea agreement.

Petitioner was indicted by the Atlantic County Grand Jury, Indictment 85-04-0717B for an incident that occurred on March 13, 1985. Petitioner was indicted for Possession of a Dangerous weapon (a knife) contrary to *N.J.S.A.* 2C:39-5(d), Possession of a Weapon for Unlawful Purposes, *N.J.S.A.* 2C:39-4 and Aggravated Assault contrary to *N.J.S.A.* 2C:12-1b.

On September 6, 1985 as a result of a plea agreement, petitioner entered a plea of guilty to the Aggravated Assault charge and all of the remaining charges in both indictments were dismissed. Petitioner was sentenced to five years in the New Jersey State Prison and required to pay a $250 fine to the Violent Crimes

Compensation Board. The sentencing judge indicated that the defendant (petitioner) is not one who would be amenable to a probationary term.

Petitioner was paroled from Leesburg State Prison on November 11, 1986 and was released from probation on March 7, 1989. He is the father of five children between the ages of three and fourteen years, two of whom are in his custody.

Petitioner admits to the abuse of alcohol and Dangerous Controlled Substance (CDS). He is a recovering alcoholic and herion-cocaine addict. While in Leesburg State Prison, petitioner voluntarily involved himself in Alcoholic Anonymous (A.A.) and Narcotics Anonymous (N.A.) It was his substance abuse and addiction which contributed to petitioners conflict with law enforcement officials and ultimately his conviction and incarceration.

Petitioner began to use drugs when he was approximately 17 years of age when he dropped out of school and got married. In 1971, petitioner was arrested for assault and battery on a police officer-threatening with a gun. In 1972, petitioner enlisted in the United States Marine Corps. and was honorably discharged three years, seven months later in 1975 at the age of 23 years. Subsequently, he returned to the Atlantic City area and was employed by the City's Department of Public Works.

In 1980, petitioner became addicted to drugs and alcohol. During this period petitioner was a professional firefighter employed with the Atlantic City Fire Department. As a consequence of his addiction, he was absent from duty and forced to resign from his employment position. Petitioner admitted to the City officials that the had a substance problem and was therefore permitted to resign in good standing. He sought help for his addiction and was admitted to rehabilitation program in or about 1981. Petitioner did not complete the drug rehabilitation program having left the facility after his detoxification or about 10 days after his admittance. He returned to Atlantic City and again used CDS and alcohol.

At the height of petitioners addiction, it cost him approximately $300 a day or approximately $2,000 per week to maintain his habit. He was unemployed and, therefore, supported his addiction through burglary, breaking and entry, among other illegal activities. Petitioner was not, however, involved in the selling of drugs.

Since his release from prison, petitioner has been very active with A.A., N A. and his church. He is now employed part-time with Star Maintenance Company and, for one day each week he operates under a vending franchise with Haslan Enterprises selling hot dogs. In or about June 1989, petitioner commenced working at the Showboat Hotel and Casino as a bar porter under his casino hotel employee registration. He did not believe that his being in close proximity of alcoholic beverages would pose a problem. However, after several weeks on the job as a bar porter, petitioner discovered that his close association did, in fact, create a problem with his sobriety. Therefore, he voluntarily resign from his position before completing the 60 day probationary working test period. Petitioner has made plans to enroll in a program for slot machine technician training at the Atlantic Community College commencing in January 1990.

DISCUSSION AND CONCLUSIONS

Casino license-disqualification pursuant to *N.J.S.A.* 52:12-86c(1).

Section 86c(1) of the Act mandates that a person who has been convicted of any one or more of the enumerated offenses under Title 2C of the New jersey Statutes shall be disqualified from holding a casino license. Section 86c(1) of the Act includes the offense of aggravated assault, *N.J.S.A.* 2C:121b(1), which is a crime of the second degree. Petitioner was found to be guilty of violating *N.J.S.A.* 2C:121b(1).

I **CONCLUDE** that the Division has met its burden of proof, by a preponderance of the credible evidence, that respondent committed the disqualifying offense. I CONCLUDE, therefore, that petitioner is statutorily disqualified from holding a casino hotel employee registration and casino employee license, pursuant to section 86c(1) of the Act.

Rehabilitation, pursuant to *N.J.S.A.* 52:12-90h and *N.J.S.A.* 5:12-91d

An applicant for licensure or current registrant in a disciplinary proceeding faced with the existence of one or more section 86 disqualifions has the opportunity to overcome the prohibition against licensure or continued registration by affirmatively demonstrating his rehabilitation, pursuant to sections 90h and/or 91d of the Act. These two sections, which are substantially similar in construction, set

forth eight specific criteria to be evaluated when a determination for rehabilitation is to be made. For the purpose of this decision, section 90h will be relied upon which provides as follows:

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

First, petitioner presently holds a casino hotel employee registration and now seeks a casino employee license for a position as a slot technician. Petitioner has been employed at divers times in the casino industry under his casino hotel employee registration commencing on or about September 1980 and terminating in or about June 1989. He is not presently employed in the casino industry.

Second, petitioner's disqualifying offense of aggravated assault in the second degree was so serious that it resulted in his conviction and a sentence of five years to State prison. The Honorable Manuel Greenberg, J.S.C. found three aggravating reasons for sentencing petitioner to a five year term and no mitigating factors to lesson the sentence. Petitioner served one year and two months of the sentence and was then granted parole.

Third and Fourth. On March 13, 1985, petitioner was arrested for the possession of a weapon (*N.J.S.A.* 2C:79-5d), possession of a weapon for unlawful purposes (*N.J.S.A.* 2C:12-b(1)). The offense, for which petitioner was subsequently indicted by the Atlantic County Grand Jury, were related to a drug transaction. He was convicted only for aggravated assault offense.

Fifth and Sixth. Petitioner was 33 years of age at the time of the commission of these offenses and he had an extensive arrest and conviction record prior to this arrest.

Seventh. There were no social conditions which contributed to petitioners conduct other than the availability and pervasive use of alcohol, a legal intoxicant.

Eighth. Petitioner presented evidence of his rehabilitation by demonstrating his early release from prison and his successful completion of his parole. His involvement in and participation with A.A. and N.A. has kept petitioner free from the use and/or abuse of alcohol and CDS. He has engaged in educational activities and graduated from Atlantic Community College data entry program (P-1) and intends to return to college and enroll in its slot technician program in January 1990. More importantly, petitioner has committed no offense since his release from Leesburg State Prison on November 3, 1986.

Petitioner has provided documents from his former Parole Officer (P-2) the Unit Director of the Atlantic Mental Health Center, Inc. (P-4), and Director of the Atlantic City Health Department Detoxification and Quarterway Facility (P-5), among others, all of whom attest to his rehabilitation efforts and his rehabilitation in fact.

I **CONCLUDE**, therefore, that petitioner has affirmatively demonstrated his rehabilitation, pursuant to ***N.J.S.A.*** 5:12-90h and 91d.

Good Character, Honesty and integrity, pursuant to ***N.J.S.A.*** 5:12-87b(2)

Pursuant to ***N.J.S.A.*** 5:12-89b(2), as incorporated within section 90b of the Act, respondent Rodriquez is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 ***N.J.A.R.*** 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 ***N.J.*** 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); German v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

David Leroy Roberts and Carolyn Mann Bishop testified as to petitioner's rehabilitation and his good character, honesty and integrity. Mr. Roberts is the lay leader and minister of the Asbury United Methodist Church and knows petitioner through his church and N.A. and A.A. Mr. Roberts has had frequent contact with petitioner through these organizations and has watched petitioner grow in dealing with his past, his marriage and his family. Petitioner also helps Roberts counsel other young men in the community who are facing problems similar to those petitioner has experienced.

Mr. Roberts, who is employed as a plumber at the Trump Regency Hotel, advised against petitioner taking the job as a bar porter because of petitioners former addiction to alcohol and drugs. Roberts asserted, however, that he did not view petitioner's employment in casino industry in an other capacity to be a threat to petitioner's alcoholism and past addiction. Roberts opined that if petitioner continues with his counseling, A.A., N.A. and the church, he will be an asset to the society, his family and the community.

Ms. Bishop testified among other things, that she had known petitioner most of her life and more recently had had closer contact with him through A.A. Ms. Bishop is not employed in the casino industry However, she is employed by Local No. 54 of the Hotel Employees and Restaurant Employees International Union. She asserted that petitioner had demonstrated good character by the change in his behavior and, more specifically, by his conduct where he voluntarily resigned from the bar porter position. She asserted that this incident demonstrated that petitioner was able to ask for help when he needed help, i.e., evidence of his good character.

Petitioner proffered seven letters from friends and officials concerned with his conduct subsequent to his release from prison In summary, the individuals writing

the letters spoke of petitioners progress in adjusting to the real world. Each letter is noteworthy for its support in petitioner and most, in support of his goal to be fully employed in the casino industry.

Having carefully evaluated the evidence and in particular petitioner's candid and forthright demeanor, I **FIND** and **CONCLUDE** that petitioner has met his burden, by clear and convincing evidence, to demonstrate that he possess the requisite good character, honesty and integrity for licensure.

I **CONCLUDE**, therefore, that the Divisions Complaint to revoke petitioners casino hotel employee registration and its letter objecting to petitioner's licensure should be **DISMISSED**.

ORDER

Accordingly, it is **ORDERED** that the Divisions Complaint seeking revocation of petitioners casino hotel registration together with its letter to the Commission objecting to petitioner's application for a casino employee license be and is hereby **DISMISSED**.

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

OAL DKT. NO. CCC 2756-89

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

10.31.89
DATE

Fillord E Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

10/31/89
DATE

Thomas Wooley
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 9 1989
DATE

Jayne LaCubia/K.S.
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESS LIST

For the Petitioner:

Marlon Bradshaw
David Roberts
Carolyn Bishop

For the State:

Marlon Bradshaw

EXHIBIT LIST

For the Petitioner:

P-1 Mr. Bradshaw's Vitae
P-2 Letter from Herman Rinaldi
P-3 Certificate of Parole Termination
P-4 Letter from Atlantic Mental Health
P-5 Letter from Sandy Couch
P-6 Letter from Carolyn Bishop
P-7 Letter from Ruth Tunnell
P-8 Letter from Bernard Reynolds
P-9 Letter from Herbert Brooks
P-10 Certificate of Membership in Asbury United Methodist Church
P-11 Certificate of Achievement from Atlantic Community College
P-12 Letter from Dr. Charles Wilson, Sr.

For the State:

R-1 Division of Gaming Enforcement Letter
R-2 Complaint to revoke hotel registration
R-3 Indictment
R-4 Documents referring to 3-13-85 incident
R-5 Judgment of Conviction
R-6 Indictment
R-7 Judgment of Conviction
R-8 Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-140
APPLICATION NO. 72565-21
OAL DOCKET NO. CCC 8832-88
ORDER NO. 89-33-14

APPLICATION OF LEON J. BRANHAM
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 16, 1989,

IT IS on this 22nd day of August 1989, ORDERED that the initial decision is modified as follows:

(1) to reject the notion of conditional relicensure; and

(2) to make specific reference to N.J.S.A. 5:12-86(c)(1) and 86(g) as the statutory basis for disqualification.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8832-88
AGENCY DKT. NO. 89-EA-140

APPLICATION OF
LEON JAMES BRANHAM
FOR A CASINO EMPLOYEE LICENSE,

Leon James Branham, applicant, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 1, 1989 Decided: July 3, 1989

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

Leon James Branham, a registered casino hotel employee, filed an application with the Casino Control Commission (Commission) for a casino employee license to work in the gaming industry as a slot machine attendant. The Division of Gaming Enforcement (Division) objected to the issuance of a license to Branham because he is alleged to have received unemployment benefits totaling $1,440 to which he was not entitled.

The objection was filed by letter on September 20, 1988. The letter equates the conduct complained of with the third degree crime of theft by deception. Theft by deception in the third degree is the unlawful acquisition of the property of another by deceit if the value exceeds $500. N.J.S.A. 2C:20-4 and N.J.S.A. 2C:20-2b(2).

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The Division also alleges that Branham does not have the good character, honesty and integrity for casino employee licensure as required by N.J.S.A. 5:12-89b(2) and 90b.

Branham contests the Division's denial and alleges that he is rehabilitated pursuant to N.J.S.A. 5:12-90h and entitled to licensure. He requested a hearing.

The matter was transmitted to the Office of Administrative Law (OAL) on December 5, 1988 to be heard as a contested case according to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 16, 1989. A plenary hearing convened on June 1, 1989.

The Division proved and Branham admitted that between August 1, 1981 and October 24, 1981, he received $1440 from the Unemployment and Disability Insurance Fund while he was employed at Globe Service Industries and Golden Crest Nursing Home. The receipt of unemployment benefits to which one is not entitled, by falsely creating the impression that one is unemployed when that is not the case, is conduct proscribed by N.J.S.A. 2C:20-4. It is theft by deception. Since the amount exceeded $500, it is theft by deception in the third degree. A third degree theft by deception is a statutory disqualifier from casino employee licensure according to N.J.S.A. 5:12-86c and 90e.

I **CONCLUDE** that Branham is disqualified from casino employee licensure. The conduct complained of constitutes a statutory disqualifying offense, unless Branham can affirmatively establish that he is rehabilitated pursuant to N.J.S.A. 5:12-90h and otherwise qualified.

The Casino Control Act provides that persons who are disqualified from casino employee licensure pursuant to section 86c may still be licensed provided they can affirmatively demonstrate rehabilitation. N.J.S.A. 5:12-90h. The rehabilitation statute requires the Commission to examine the applicant's conduct in light of the following criteria: (1) The nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions

which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Branham acknowledged that he could not excuse his conduct. He desired however, to explain the circumstances under which it occurred. After a period of unemployment in 1981, he obtained a position as an orderly at Golden Crest Nursing Home. He had five children at home, was behind in his rent and had a large oil bill. He continued to receive unemployment benefits in order to reduce his indebtedness. He said that this act was out of character for him; it was an exception rather than the rule. The information he provided concerning his history and background illustrate and confirm his statement.

He was born in Brooklyn on August 6, 1940. He attended school to the 8th grade. He was employed in New York as a shipping clerk. He came to Atlantic City in 1970 and began working as an orderly in local nursing homes. He and his wife have had six children. Two of his children still live at home with him and his wife. There are also two grandchildren at home with him. He is currently employed at Trop World as a public area attendant. He wants to be a slot attendant and has applied for a gaming license. After filing his application, the Division objected to his licensure based in part upon the outstanding unemployment benefits claim for restitution.

As a direct result of the Division's objection letter, the applicant has begun to make payments of $40 per month. The applicant made five such payments at the time of the plenary hearing. He candidly admitted that the Division of Unemployment and Disability Insurance (DUDI) was less aggressive than his other creditors and therefore he satisfied other creditors first. The DUDI did reduce his balance by keeping unemployment benefits he was otherwise entitled to during a short period of unemployment.

The applicant offered a number of letters of reference or character written for him over many years. Among them were letters from present and former

supervisors. The 13 letters are complimentary. One praises a heroic action performed by the applicant during a fire at a nursing home. Others describe his unfailing kindness to patients. At Trop World and Sands he impresses with his reliability, honesty and hard work.

The applicant also supplied evidence that as an adult he made up for the lack of educational attainment of his youth. He has acquired a high school equivalency and an Associate in Arts degree from Atlantic Community College. He has also earned a certificate of achievement in data entry from Atlantic Community College. He successfully completed the course for slot attendants at the Casino Career Institute.

The applicant also voluntarily acknowledged that he had a problem with alcohol in 1987. He was detoxed in Atlantic City in June of that year.

Pursuant to the requirements of N.J.S.A. 5:12-90h, I **FIND**:

1. The applicant has applied for a position as slot attendant, a position on the casino floor in direct contact with patrons.

2. The conduct was serious in that it involved theft. It was not accompanied by violence nor was any individual harmed.

3. The conduct occurred after a period of unemployment when the applicant was behind in his rent and fuel account.

4. The conduct occurred in 1981.

5. The applicant was 41 years old when the conduct occurred.

6. The conduct was an isolated event.

7. No social conditions contributed to the incident. I merely observe that the applicant raised six children on the salary of an orderly employed in a nursing home, one of the lowest paid positions in the work force.

8. The applicant has acquired additional education since the conduct complained of. He is recommended by his supervisors for licensure. He has begun but not completed restitution.

But for the applicant's failure to have completed restitution, he is rehabilitated. There is no question in my mind that the conduct complained of was an isolated event consummated under the pressure of family responsibilities. It will not occur again. Whether or not such a prediction can be made of an applicant is the rationale of the rehabilitation analysis. Nevertheless restitution has been a sine qua non of rehabilitation since biblical days. It is equally true that a better paying position will enable the applicant to make restitution more quickly. Therefore, restitution ought to be made a condition of relicensure.

I **CONCLUDE** that the applicant is rehabilitated pursuant to N.J.S.A. 5:12-90h.

This applicant has the good character, honesty and integrity required of licensed casino employees by N.J.S.A. 5:12-89b2 and 90b. It is true that he has not yet completed making restitution for the only serious blemish in an otherwise decent and productive life. But the blemish was not motivated by greed or avarice and time has illustrated that it was an isolated event.

Restitution ought to be made a condition of relicensure. If it is, a just result can be achieved for all interested parties including both the DUDI and the applicant, who deserves an opportunity to enjoy the prosperity of the casino experiment in Atlantic City.

I **CONCLUDE** that the applicant possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b2 and 90b.

I **ORDER** that the letter objection filed herein by the Division of Gaming Enforcement be **DISMISSED**.

I **ORDER** that the application for casino employee licensure be approved and that a gaming license be issued to the applicant upon his compliance with all other rules and regulations governing licensing.

It is further **ORDERED** that at the time the applicant seeks renewal of his casino employee license, the Division will report the status of applicant's obligation to DUDI to the Commission.

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

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

July 3, 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

7-7-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 7 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Applicant:

Leon J. Branham

For the Respondent:

Leon J. Branham

EXHIBIT LIST

For the Applicant:

P-1 Letter to Ralph Fusco, Deputy Attorney General from Leon J. Branham, dated May, 12, 1989
P-2 Letter of Reference from Trop World
P-3 Letter of Reference from Trop World, dated December 15, 1988
P-4 Letter of Reference from Trop World, dated December 3, 1988
P-5 Letter of Reference from Trop World, dated December 1, 1988
P-6 Letter from Sandy Couch, Director City of Atlantic City Health Department Detoxification and Quarterway Facility
P-7 Letter of Reference from Trop World, dated November 23, 1988
P-8 Certificate of Achievement, dated May 14, 1987
P-9 Letter from Bradley H. Stone, President Sands Hotel, Casino & Country Club, dated July 9, 1986
P-10 Associate in Arts Degree from Atlantic Community College
P-11 Certificate of Achievement, Atlantic County Community College, August 3, 1984
P-12 High School Equivalent Diploma, September 14, 1982
P-13 Letter of Reference dated July 14, 1980 from "Nurse in Charge"
P-14 Letter dated July 10, 1980 from Therese Pearlman, South Carolina Ave. I.C.F.
P-15 Letter of Reference from James Paul Witzleben, R.T.,Golden Crest Convalescent Center, dated April 21, 1978
P-16 Letter from Edward Einhorn, L.N.H.A. Administrator, Golden Crest Convalescent Center
P-17 Nurse's Aide Diploma dated December 23, 1977
P-18 Letter of Reference from Jerry Mair, Warehouse Manager, Europe Craft Imports, Inc., dated October 7, 1970
P-19 Letter of Reference from Barbara Keleman, Personnel Manager Susan Thomas Inc., dated June 16, 1970
P-20 Copies of two checks
P-21 Summons, Atlantic County District Court, dated August 3, 1981
P-22 Letter from Credit Central Inc., dated September 3, 1981

For the Respondent:

R-1 Certificate of Debt, Superior Court of New Jersey, dated February 10, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-264
LICENSE NO. 59844-21
REGISTRATION NO. 62546-40
OAL DOCKET NO. CCC 8763-88
ORDER NO. 89-47-17

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. RICHARD P. BROWN, JR., Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 7th day of December 1989, ORDERED that the initial decision is modified as follows:

> to note that section 89(b)(2) of the Casino Control Act has been amended to delete the reference to "reputation for" in connection with an applicant's affirmative burden of establishing good character, honesty and integrity (L. 1987, c. 354).

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8763-88
AGENCY DKT. NO. 88-264

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RICHARD P. BROWN, JR.,
Respondent.

Norma L. Stancil, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Richard P. Brown, Jr., the respondent, pro se

Record Closed: September 22, 1989 Decided: October 13, 1989

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Richard P. Brown, Jr.'s casino employee license no. 59844-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-129(1) and for the revocation of Richard P. Brown, Jr.'s casino hotel employee

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registration no. 62546-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license and registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he lacks the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent contended that he was rehabilitated, pursuant to sections 90h and 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license and a casino employee registration from the Commission so he could be employed as a houseman and the security guard in the casino industry. By complaint to the Commission, filed February 29, 1988, the Division objected to the respondent's continued licensure and registration, asserting that the respondent had committed the offenses of possession of a controlled dangerous substance (marijuana) with the intent to distribute (third degree), in violation of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (marijuana) (fourth degree), in violation of N.J.S.A. 2C:35-10, and conspiracy to distribute a controlled dangerous substance (marijuana), in violation of N.J.S.A. 2C:5-2, two of which are disqualifying offenses under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the complaint, the Commission notified the respondent on March 10, 1988, that he had the right to a hearing, and that failure to respond within 15 days could result in his license being revoked. By application dated March 22, 1988, which was received by the Commission on March 24, 1988, the respondent requested a hearing. The respondent requested, pursuant to section 86d, that the Commission defer decision upon the Division's complaint during the pendency of the prosecution for the above pending charges. The Commission granted this request and the proceedings were stayed. On October 31, 1988, the respondent telephoned the Commission and informed it that pursuant to a plea agreement, he had pleaded guilty to possession of a controlled dangerous substance (marijuana) with the intent to distribute, in violation of N.J.S.A. 2C:35-5b(1), and that the remaining charges had been dismissed. By letter dated November 17, 1988, the Commission notified the respondent that the case would proceed to a hearing. On November 17, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on December 2, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Stephen W. Thompson on March 13, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:35-5, possession of a controlled dangerous substance with the intent to distribute.

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

C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled in the matter for June 12, 1989. On May 16, 1989, the respondent requested an adjournment as he was being ordered onto active duty in the United States Army reserve for annual training and would be at Ft. Meade, Maryland on the scheduled hearing date. This request for adjournment was granted, and the hearing was rescheduled.

A hearing was held on September 22, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On November 24, 1987, a confidential informant notified New Jersey State Police Detective J.C. Leary that Horace J. Christian approached him and asked him if he was interested in purchasing some marijuana. Arrangements were made for the confidential informant to purchase one pound of marijuana for $1,500.00 from Mr. Christian.

The confidential informant and State Police Detective Richard Martin, who was posing as the informant's partner, met Mr. Christian at the Tropicana Hotel and Casino. The detective was wearing a wire (microphone) in order to record the conversations. The three men proceeded to a location on Florida Avenue where Mr. Christian left to obtain the marijuana. He returned a short while later and indicated that the marijuana would not arrive until later. He did, however, provide the confidential

informant and the detective with a one ounce sample of the marijuana. Mr. Christian then went to work at Caesar's Hotel and Casino.

Later, Mr. Christian contacted the confidential informant from Caesar's and told the confidential informant to meet him at Caesar's at 10 p.m. Arrangements were made to transfer the marijuana. Detective Leary began a stake out on Florida Avenue in order to observe the transaction. The confidential informant and Mr. Christian entered the respondent's house at 18 South Florida Avenue.

After a series of negotiations and various trips by the parties involved, the confidential informant walked from the porch of the house at 18 South Florida Avenue to Detective Martin's car and informed him that the respondent was holding approximately one pound of marijuana under his coat. Several State Police Detectives then converged on 18 South Florida Avenue and told the respondent and Mr. Christian that they were under arrest.

The respondent fled the scene and was pursued by two detectives. The respondent dropped the bag of marijuana, which was recovered by a detective, and he was subsequently arrested in an alley. The respondent subsequently admitted that he had arranged the transaction and that the marijuana was his. He also admitted to previously selling marijuana to Mr. Christian. The respondent later told the police that the marijuana belonged to a man named Robert who worked in housekeeping at Caesar's. The respondent arranged for Mr. Christian to purchase the marijuana from Robert for $1,400 which Mr. Christian arranged to sell for $1,500. [P-1]

The seized substance was tested at the State Police Forensic Science Laboratory. The substance was determined to be 447 grams of marijuana.

On June 15, 1988, the respondent was indicted by the Atlantic County Grand Jury and was charged in Indictment 88-06-1496-C-CP with: count one, possession of over 50 grams of marijuana, in violation of N.J.S.A. 2C:35-10a(3); count two, possession of over one ounce of marijuana with the intent to distribute (third degree), in violation of N.J.S.A. 2C:35-5a(1) and 5b(11); and count three, possession of marijuana with the intent to distribute within 1,000 feet of a school (third degree), in violation of N.J.S.A. 2C:35-7 (P-5).

On July 25, 1988, the respondent entered a plea of not guilty to the charges. On September 15, 1988, he retracted his plea and entered a plea of guilty to count two of the indictment, possession of over one ounce of marijuana with the intent to distribute (third degree), in violation of N.J.S.A. 2C:35-5a(1). On October 31, 1988, the respondent was sentenced in the Superior Court of New Jersey, Atlantic County, Law Division-Criminal, to serve three years probation, one day in the county jail, pay a $500.00 fine, a $30.00 Violent Crimes Compensation Board penalty, a $1,000 Drug Enforcement and Demand Reduction penalty, a $50.00 Laboratory Fee, and his driver's license was suspended for six months (P-6).

At the hearing, the respondent denied ever possessing the marijuana and denied ever meeting the confidential informant. He did, however, admit arranging for the transfer of the marijuana to Mr. Christian and making a telephone call arranging for the transfer of the marijuana to Mr. Christian.

The respondent is 25 years old, and he was 23 years old at the time of the offense. He was raised in Atlantic City, and he is the second of four children. His parents were divorced when he was 12 years old. He graduated from Atlantic City High School in 1982, and he attended Mays Landing Vocational School in 1983.

Later that year, the respondent enlisted in the United States Army. He served on active duty for three years, and has served in the reserves the last three years. He originally served in construction, however, he crossed trained as a cook. He presently is an E-5, sergeant, and he is entitled to wear the good conduct medal.

The respondent has two daughters for whom he provides support.

The respondent also testified that he became employed at Trump Castle Hotel and Casino as a houseman in 1983 or 1984. He worked there for one year. He left the Trump Castle because management complained about the respondent taking time off for his reserve duty. The respondent then worked in the maintenance department of Bally's Park Place for two weeks. He left Bally's because he received a better job offer at Caesar's Boardwalk Regency Hotel and Casino. The respondent became employed at Caesar's in 1985 as a security guard. He remained employed at Caesar's until November 1988, when he was released due to his drug conviction in Superior Court. While employed at Caesar's, the respondent was also employed as a baker at Fralinger's and in 1988 as a

cook at the Claridge Hotel and Casino. Since November 1988, he has been employed as a cook at the Radisson Flagship Resort.

In 1986 and early 1987, the respondent began experimenting with drugs again. In the spring of 1987, he signed himself into the Keystone Drug Rehabilitation Facility in Pennsylvania. He entered a 90 day inpatient rehabilitation program and continued with Narcotics Annonymous.

The respondent submitted two letters of recommendation in his behalf. The first, written by Joseph N. Perchetti, command sergeant major, Company C, 469th Engineer Battalion, United States Army Reserve, dated June 30, 1989, states that he has known the respondent for five years and during that time, the respondent has demonstrated himself to be a responsible and trustworthy individual (R-1). The second, written by Gerald Huffman of Radisson Flagship Resort, and dated June 19, 1989, states in pertinent part:

> Richard has been a trusted employee while I have been here at the Radisson Flagship Resort.
>
> He has shown dedication and willingness to accomplish any task put forth.
>
> I feel Richard would be a very good employee for any establishment when the right teamwork attitude is shown. [R-7]

The Division did attempt to refute the respondent's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee license and registration, he has a direct interest in the outcome and a bias in these proceedings. During, both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I am somewhat skeptical of the respondent's testimony. He disputed the Division's documentary evidence and refused to accept responsibility for his actions. Accordingly, I am skeptical of the respondent's testimony concerning the underlying circumstances surrounding the offense in this case.

FINDINGS OF FACT

1. On November 24, 1987, the respondent arranged for a Mr. Christian to purchase one pound of marijuana for $1,400 from an individual named Robert. The respondent knew Mr. Christian intended to sell this marijuana for $1,500 to another individual.

2. The respondent possessed the marijuana on November 24, 1987.

3. On June 15, 1988, the respondent was indicted by the Atlantic County Grand Jury and was charged in Indictment 88-06-1496-C-CP with: count one, possession of over 50 grams of marijuana, in violation of N.J.S.A. 2C:35-10a(3); count two, possession of over one ounce of marijuana with the intent to distribute (third degree), in violation of N.J.S.A. 2C:35-5a(1) and 5b(11); and count three, possession of marijuana with the intent to distribute within 1,000 feet of a school (third degree), in violation of N.J.S.A. 2C:35-7.

4. On September 15, 1988, the respondent entered a plea of guilty to count two of the indictment, possession of over one ounce of marijuana with the intent to distribute (third degree), in violation of N.J.S.A. 2C:35-5a(1). On October 31, 1988, the respondent was sentenced in the Superior Court of New Jersey, Atlantic County, Law Division-Criminal, to serve three years probation, one day in the county jail, pay a $500.00 fine, a $30.00 Violent Crimes Compensation Board penalty, a $1,000 Drug Enforcement and Demand Reduction penalty, a $50.00 Laboratory Fee, and his driver's license was suspended for six months.

5. The respondent is 25 years old, and he was 23 years old at the time of the offense. He was raised in Atlantic City, and he is the second of four children. His parents were divorced when he was 12 years old. He graduated from Atlantic City High School in 1982, and he attended Mays Landing Vocational School in 1983.

6. In 1983, the respondent enlisted in the United States Army. He served on active duty for three years, and has served in the reserves the last

three years. He presently is an E-5, sergeant, and he is entitled to wear the good conduct medal.

7. The respondent has two daughters for whom he provides support.

8. The respondent became employed at Trump Castle Hotel and Casino as a houseman in 1983 or 1984. He worked there for one year. He left the Trump Castle because management complained about the respondent taking time off for his reserve duty.

9. The respondent then worked in the maintenance department of Bally's Park Place for two weeks. He left Bally's because he received a better job offer at Caesar's Boardwalk Regency Hotel and Casino.

10. The respondent became employed at Caesar's in 1985 as a security guard. He remained employed at Caesar's until November 1988, when he was released due to his drug conviction in Superior Court.

11. While employed at Caesar's, the respondent was also employed as a baker at Fralinger's and in 1988 as a cook at the Claridge Hotel and Casino.

12. Since November 1988, he has been employed as a cook at the Radisson Flagship Resort.

13. In 1986 and early 1987, the respondent began experimenting with drugs again. In the spring of 1987, he signed himself into the Keystone Drug Rehabilitation Facility in Pennsylvania. He entered a 90 day inpatient rehabilitation program and continued with Narcotics Annonymous.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, provides in pertinent part:

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

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

. . . .

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

. . . .

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

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in

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

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

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

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the

commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The

Division contends, that the respondent was convicted of a violation of N.J.S.A. 2C:35-5a(1), possession of over one ounce of marijuana with the intent to distribute (third degree), which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued licensure and registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's conviction of a violation of N.J.S.A. 2C:35-5a(1) disqualifies the respondent from continued licensure and registration.

N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970 c.226 (C.24:21-1 et eq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> . . .
>
> b. Any person who violates subsection a. with respect to:
>
> . . .
>
> (11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants and dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants and dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $15,000.00 may be imposed;

The Division established that the respondent knowingly possessed and participated in the sale of one pound of marijuana to a confidential informant and an undercover State Police detective. The Division further established that the respondent was convicted in Superior Court of possession of over one ounce of marijuana with the

intent to distribute (third degree). The respondent admitted to the police that he had arranged the transaction and that the marijuana was his. He also admitted to previously selling marijuana to Mr. Christian. The respondent later told the police that the marijuana belonged to a man named Robert who worked in housekeeping at Caesar's. The respondent arranged for Mr. Christian to purchase the marijuana from Robert for $1,400 which Mr. Christian arranged to sell for $1,500. At the hearing, the respondent denied ever possessing the marijuana and denied ever meeting the confidential informant. He did, however, admit arranging for the transfer of the marijuana to Mr. Christian and making a telephone call arranging for the transfer of the marijuana to Mr. Christian. Even if we accept the respondent's testimony at the hearing, this still establishes the offense under New Jersey law.

N.J.S.A. 2C:2-6, Liability for conduct of another; complicity provides in pertinent part:

> a. A person is guilty of an offense if it is commited by his own conduct or by the conduct of another person for which he is legally accountable, or both.
>
> b. A person is legally accountable for the conduct of another person when:
>
> . . .
>
> (3) He is an accomplice of such other person in the commission of an offense; or
>
> (4) He is engaged in a conspiracy with such other person.
>
> c. A person is an accomplice of another person in the commision of an offense if:
>
> (1) With the purpose of promoting or facilitating the commission of the offense; he
>
> . . .
>
> (b) Aids or agrees or attempts to aid such other person in planning or committing it; or
>
> . . .
>
> f. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different

> offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

Under the criminal law of New Jersey, any person who aids or abets another to commit a crime is punishable as a principal. State v. Stocksdale, 138 N.J. Super. 312 (Law Div. 1975). Further, those who aid of abet the commission of a crime are not only principals, but are all equally guilty. State v. Madden, 61 N.J. 377 (1972); State v. Humphreys, Jr., 101 N.J. Super. 539 (App. Div. 1968). The respondent's action of making a telephone call arranging for the transfer of marijuana from Robert to Mr. Christian so Mr. Christian could sell marijuana to the confidential informant is sufficient to make the respondent an aider or abettor or accomplice to the possession with the intent to distribute offense committed by Mr. Christian. Thus, even under the respondent's statement of the facts, he was a principal to the offense and equally as guilty as Mr. Christian. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1) and that the respondent was convicted of a violation of N.J.S.A. 2C:35-5a(1). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(11) the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued licensure and registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

A licensee and registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued licensure and registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d. These sections sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the registrant's position or the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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

In regard to the first criterion, Richard P. Brown, Jr. is a casino licensee and registrant and was employed as a houseman and a security guard. As such, he does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:35-5a(1), possession of over one ounce of marijuana with the intent to distribute (third degree), while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent arranged for the transfer of marijuana to another casino employee so that person could sell the marijuana for a profit. The respondent acted as an intermediary in a drug sale. Such activities cannot be tolerated of security guards in the casino industry.

Fourth, the respondent's misconduct occurred in November 1987, when it ceased.

Fifth, the respondent was 23 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent has not been convicted of any other violations of the criminal laws. He did, however, admit to previously using drugs and previously selling drugs to Mr. Christian.

Seventh, I do not find any social conditions which may have contributed to the offense or conduct.

Eighth, the respondent has made few rehabilitative efforts. In 1986 and early 1987, the respondent began experimenting with drugs again. In the spring of 1987, he signed himself into the Keystone Drug Rehabilitation Facility in Pennsylvania. He entered a 90 day inpatient rehabilitation progam and continued with Narcotics Annonymous. Approximately six months later, the respondent arranged for the sale of one pound of marijuana and was arrested for possession of a controlled dangerous substance with the intent to distribute. On October 31, 1988, the respondent was placed on probation for three years. As such, he has yet to complete even one year of his probationary period. The respondent does support his two daughters and has served honorably in the Army reserve. The respondent has been employed in the casino industry for six years; however, there is no evidence of record regarding his performance in the industry.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h or N.J.S.A. 5:12-91d.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Brown was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a

reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is not readily apparent that the respondent's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. While the misconduct did not involve his licensed employment, the underlying circumstances do not mitigate the seriousness of the misconduct. In addition, the respondent has not fully accepted responsibility for his misconduct, and tries to dispute the underlying facts. He did, however, admit prior drug use. The position of security guard is a position of trust. Such persons are expected to uphold the law not violate it. The respondent violated this trust. Drug use, possession, or distribution by a security guard employed in the casino industry cannot be tolerated and does not evidence a person of good character. Accordingly, it cannot be stated that the respondent presents no risk to the public nor to the integrity of the gaming industry in this state. The respondent has not earned the privilege of licensure or registration in the casino industry. An examination of the whole person does not clearly and convincingly establish that Mr. Brown is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

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

DISPOSITION

It is ORDERED that the complaint filed by the Division against the respondent is **SUSTAINED** and that casino employee license no. 59844-21 and casino hotel employee registration no. 62546-40 be revoked.

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

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

October 13, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

10/16/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 19 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 New Jersey State Police Investigation Report, dated November 24, 1987

P-2 New Jersey State Police Arrest Report, dated November 24, 1987

P-3 Complaint filed in Atlantic City Municipal Court, dated November 24, 1987

P-4 New Jerrsey State Police Forensic Science Bureau Laboratory Report, dated December 11, 1987

P-5 Atlantic County Grand Jury Indictment Number 88-06-1496-C-CP, filed June 15, 1988

P-6 Superior Court of New Jersey Judgment of Conviction, dated October 31, 1988

For the Respondent:

R-1 Letter of Joseph N. Perchetti, command sergeant major, Company C, 469th Engineer Battalion, U.S. Army Reserve, dated June 30, 1989

R-2 Letter of Gerald Huffman, Radisson Flagship Resort, dated June 19, 1989

WITNESSES

For the Petitioner:

None

For the Respondent:

Richard P. Brown, Jr., the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-68
APPLICATION NO. 76321-21
REGISTRATION NO. 21110-40
OAL DOCKET NO. CCC 7943-88
ORDER NO. 89-31-10

APPLICATION OF STEPHANIE BUNCH
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 22nd day of August 1989, ORDERED that the initial decision is adopted; and

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

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

IT IS FURTHER ORDERED that this denial shall not affect Stephanie Bunch's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7943-88
AGENCY DKT. NO. 89-EA-68

APPLICATION OF
STEPHANIE BUNCH
FOR A CASINO
EMPLOYEE LICENSE,

Stephanie Bunch, applicant, pro se
Ralph Fusco, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 25, 1989 Decided: June 22, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Stephanie Bunch applied to the Casino Control Commission (Commission) for a casino employee license as a craps dealer. On August 2, 1988, the Division of Gaming Enforcement (Division) objected to the applicant's licensure in a letter to the Commission.

The letter charged that the applicant committed conduct equivalent to theft by deception in violation of N.J.S.A. 2C:20-4, by receiving more than $500 of unemployment benefits to which she was not entitled. Theft by deception in an amount over $500 is a third degree crime. N.J.S.A. 2C:20-2b(2). A third degree crime is a disqualification from casino employee licensure according to N.J.S.A. 5:12-86c.

New Jersey Is An Equal Opportunity Employer

The Division also alleges that the applicant does not have the good character, honesty and integrity for casino employee licensure required by N.J.S.A. 5:12-89b(2) and 90b.

The applicant claims that she is rehabilitated pursuant to N.J.S.A. 5:12-90h and therefore entitled to licensure.

FACTUAL DISCUSSION

In 1979, Stephanie Bunch was a high school student. One day she discovered that she was pregnant. It was not a happy discovery. Shortly thereafter, Stephanie's parents began divorce proceedings. Stephanie was made to feel that her unwanted pregnancy contributed to her parent's divorce. She began to use alcohol and drugs.

Stephanie failed to graduate from high school. She found a job as a cashier in a casino hotel. She kept the job for about a year. When it became apparent that she could not keep her cash register bank straight, she was transferred to the housekeeping department of the hotel. A year later she was terminated from that job for absenteeism.

In the meantime Stephanie began to live with a drug dealer. Her pay while she was employed went to her drug habit. She became addicted to cocaine. After she was unemployed, she sold her clothes and her furniture for drug money. She was caught shoplifting in 1986 and convicted. Her baby's father sought custody and Stephanie voluntarily conceded it to him. She viewed the child as an impediment to "getting high."

In 1986 something happened to Stephanie's boyfriend and he enrolled in a drug rehabilitation program. When he returned from the program he attended Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings. He made Stephanie attend with him. At first she went along for company. Soon she became involved. She wanted to enroll in a drug rehabilitation program but, as she was not employed, she had no insurance to pay for it. She continued to attend AA and NA meetings. She continues to attend at present. She has been drug and alcohol free for almost three years.

Stephanie has been employed at Resorts International Casino Hotel for three years. She started as a housekeeper and is now a cashier in a restaurant. She regularly attends church and is a volunteer on the Church Usher Board. She greets parishoners at the Church door and hands them the program. Her pastor says that she is dealing effectively with the "impediments of her past." Finally, she has obtained actual custody of her daughter again. She walks the child to school in the morning and picks her up at the Church after work. Her Church has an after school program for young children whose parents are employed.

One impediment of Stephanie's past remains. In 1982 and 1984 she falsely obtained unemployment benefits. The amount appears to be at least $3,671.25. Fines and interest have accrued. Except for a seized tax refund, the balance remains unpaid. Stephanie has never made a single voluntary payment. She has not attempted to set up a repayment schedule.

DISQUALIFICATION

Theft by deception is the unlawful acquisition of another's property by deceit. N.J.S.A. 2C:20-4. It is a third degree crime if the value of the property exceeds $500. N.J.S.A. 2C:20-2b(2).

The applicant admitted at the prehearing conference and confirmed at the plenary hearing that she collected unemployment compensation over $500 during August and September 1982 and May through August 1984 without entitlement to such compensation.

I **CONCLUDE** that the applicant committed acts which constitute theft by deception in the third degree.

I further **CONCLUDE** that the applicant is disqualified from casino employee licensure because her conduct in committing a third degree theft is a disqualification from casino employee licensure pursuant to N.J.S.A. 5:12-86c and 90e.

REHABILITATION

An applicant for casino employee licensure who has been disqualified pursuant to N.J.S.A. 5:12-86c and 90e can nevertheless achieve licensure by affirmatively demonstrating rehabilitation. N.J.S.A. 5:12-90h. The following factors must be considered: (1) The nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

I FIND that:

1. The applicant seeks licensure as a craps dealer.

2. The conduct complained of was serious although it was not a crime of violence and involved no individual victim.

3. The applicant continued to receive unemployment benefits after she was fully employed.

4. The offense occurred in 1982 and again in 1984.

5. The applicant was 20 and 22 years old when the conduct was committed.

6. The conduct has not been repeated since 1984.

7. There was no testimony that social conditions contributed to the offense.

8. There was no evidence of rehabilitation from the offense complained of, the unlawful acceptance of unemployment benefits. The applicant however, has controlled her addiction to drugs and alcohol by attendance at AA and NA, reassumed her role as a parent and became a productive member of the workforce.

Because the applicant has not made any attempt to make restitution, she cannot be considered rehabilitated. I therefore **CONCLUDE** that the applicant has failed to affirmatively establish her rehabilitation as required by N.J.S.A. 5:12-90h.

GOOD CHARACTER, HONESTY AND INTEGRITY

The applicant has exhibited her honesty during the proceeding. She acknowledged her drug and alcohol dependency, her criminal conduct and her failure to maintain her home, her job and her family. She has shown her courage by reclaiming each of these and her sobriety. The concepts of good character and integrity however, cannot inhere in an unrehabilitated offender. Until the applicant can deal effectively with her outstanding debt to the unemployment fund, she cannot claim to possess the good character, honesty and integrity required for casino employee licensure.

I **CONCLUDE** that the applicant has failed to prove by clear and convincing evidence that she possesses the good character, honesty and integrity for casino employee licensure.

ORDER

I **ORDER** that the application of Stephanie Bunch for a casino employee license be **DENIED; and,**

It is further **ORDERED** that this denial shall not affect the applicant's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so

act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

June 22, 1989
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6/27/89
DATE

Elaine Gelbert
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 27 1989
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Applicant:

Stephanie Bunch

For the Respondent:

Stephanie Bunch

EXHIBIT LIST

For the Applicant:

P-1 **Letter from Reverend Harriott**

For the Respondent:

R-1 **Division of Gaming letter and return receipt card**

R-2 **Certificate of Debt, Schedule of Overpayments, and Determination and Demand for Refund**

R-3 **Papers regarding 1984 incident**

R-4 **Printout from New Jersey Division of Unemployment and Disability Insurance dated 5-4-88**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-154
ORDER NO. 89-50-28(a)

State of New Jersey, Department Of Law and Public Safety, Division of Gaming Enforcement,	:	
Complainant,	:	ORDER
v.	:	
Calmark Associates, L.P., Calmark Properties, Inc., Calmark Financial Corporation, Calmark Holding Corporation, Uri Sheinbaum, Joe H. Freeman, III, Donald Brumlik, Ron Aubert, Derrick Ashcroft, Joe Carey, Jim Ciontea, Mike Costa, Gerald Goldman, Bill Gould, John Huskey, Robert Loeffler, John Scott, Matt Smith, Ygal Sonenshine, Robert Weiss, Haig Bagerdjian, John Cashion, Alan Jacobs, East Shore Associates, L.P. A/K/A ESA Associates, L.P., North Shore Associates, Sanford J. Hillsberg, Robert Blake, Aaron Blake, Ronald A. Fischman, Steven Cooperman, Del Webb Corporation, and The Claridge at Park Place, Inc.,	:	
Respondents.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement, and it appearing that ESA Associates, L.P., which, together with Calmark Associates, L.P., and all of the other respondents named in the complaint with the exception of Del Webb Corporation (Webb) and The

Claridge at Park Place, Incorporated (CPP) (collectively referred to as "the Reporting Group") was denied a waiver of qualification and was ordered to file a completed application for interim casino authorization (ICA), including a fully executed and approved trust agreement, by April 28, 1989 (see Order No. 89-13-8); and

It appearing that, on April 26, 1989, the Reporting Group was granted an extension of time in which to file its completed ICA application until ten days after the Commission ruled on a petition (PRN 119903) for reconsideration (see Order No. 89-17-22); and

It appearing that, on May 24, 1989, the Commission denied that request for a reconsideration and ordered that pursuant to Order No. 89-17-22, the Reporting Group must file its completed ICA application by June 5, 1989 (see Order No. 89-21-15); and

It appearing that, on May 31, 1989, the Commission granted the Reporting Group an additional extension of time in which to file its completed ICA application until 10 days after the Commission ruled on a petition (PRN 178902) for reconsideration (see Order No. 89-22-32); and

It appearing that, on September 27, 1989, the Commission denied that second request for reconsideration and ordered that, pursuant to Order No. 89-22-32, the Reporting Group must file its completed ICA application, including a fully executed and approved trust agreement, by October 10, 1989; and

It appearing that the Reporting Group failed to file an ICA application by October 10, 1989, as ordered by the Commission, (see Order No. 89-39-12); and

A settlement having been proposed on behalf of all respondents except Webb, CPP, Robert Blake and Aaron Blake, the terms of which were placed on the record by counsel at the Commission's public meeting of December 20, 1989; and

The Commission having considered the entire record in this matter, including the proposed settlement and arguments of counsel (Deputy Attorney General James C. Fogarty appearing for the Division of Gaming Enforcement, Brian Molloy, Esq., appearing on behalf of all respondents, except Webb, CPP, Robert Blake, and Aaron Blake, and Brian Spector, Esq appearing for CPP and Webb) at its public meeting of December 20, 1989, and having unanimously determined for the reasons set forth on the record, that the proposed settlement should be accepted and approved,

IT IS on this 21st day of December, 1989, ORDERED that the settlement placed on the record at the Commission's public meeting of December 20, 1989, is hereby accepted and approved, subject to the following condition:

That by 5:00 p.m. Eastern Daylight Time on Wednesday, December 27, 1989:

1) all certifications concerning those respondents who have divested their Webb securities be filed with the Commission and Division;

2) the proposed trust agreement be executed and that the Webb securities in question be transferred to the trustee;

3) adequate documentation of the execution of the trust and transfer of the securities be provided to the Commission and Division; and

4) a written settlement agreement incorporating the terms placed on the record be submitted to the Commission.

AND BE IT FURTHER ORDERED that the Legal Division be delegated the authority to determine:

1) the form and completeness of the Certifications, the Trust Agreement and the Settlement Agreement;

2) the adequacy of the evidence of funding of the trust; and

3) the timeliness of submissions.

AND IT IS FURTHER ORDERED THAT copies of this order be served forthwith upon the parties in this matter.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-154
ORDER NO. 89-50-28(b)

State of New Jersey, Department Of Law and Public Safety, Division of Gaming Enforcement,	:	
Complainant,	:	ORDER
v.	:	
Calmark Associates, L.P., Calmark Properties, Inc., Calmark Financial Corporation, Calmark Holding Corporation, Uri Sheinbaum, Joe H. Freeman, III, Donald Brumlik, Ron Aubert, Derrick Ashcroft, Joe Carey, Jim Ciontea, Mike Costa, Gerald Goldman, Bill Gould, John Huskey, Robert Loeffler, John Scott, Matt Smith, Ygal Sonenshine, Robert Weiss, Haig Bagerdjian, John Cashion, Alan Jacobs, East Shore Associates, L.P. A/K/A ESA Associates, L.P., North Shore Associates, Sanford J. Hillsberg, Robert Blake, Aaron Blake, Ronald A. Fischman, Steven Cooperman, Del Webb Corporation, and The Claridge at Park Place, Inc.,	:	
Respondents.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement, and it appearing that Aaron Blake is the holder of 25,500 shares of common stock of Del Webb Corporation (Webb), a qualifier of casino licensee, The Claridge at Park Place, Incorporated (CPP); that ESA Associates, L.P. (ESA), which, together with Calmark

Associates, L.P., and other persons, including Aaron Blake (collectively referred to as "the Reporting Group"), was denied a waiver of qualification and was ordered to file a completed application for interim casino authorization (ICA), including a fully executed and approved trust agreement, by April 28, 1989 (see Order No. 89-13-8); and

It appearing that, on April 26, 1989, the Reporting Group was granted an extension of time in which to file its completed ICA application until ten days after the Commission ruled on a petition (PRN 119903) for reconsideration (see Order No. 89-17-22); and

It appearing that, on May 24, 1989, the Commission denied that request for a reconsideration and ordered that pursuant to Order No. 89-17-22, the Reporting Group must file its completed ICA application by June 5, 1989 (see Order No. 89-21-15); and

It appearing that, on May 31, 1989, the Commission granted the Reporting Group an additional extension of time in which to file its completed ICA application until 10 days after the Commission ruled on a petition (PRN 178902) for reconsideration (see Order No. 89-22-32); and

It appearing that, on September 27, 1989, the Commission denied that second request for reconsideration and ordered that, pursuant to Order No. 89-22-32, the Reporting Group must file its completed ICA application, including a fully executed and approved trust agreement, by October 10, 1989; and

It appearing that the Reporting Group, including Aaron Blake, failed to file an ICA application by October 10, 1989, as ordered by the Commission, (see Order No. 89-39-12); and

Aaron Blake having submitted a certification that until recently he had not hired an attorney to represent him in New Jersey; and

Aaron Blake having further certified that he has never received any documents from the Casino Control Commission or the Division of Gaming Enforcement; and

Aaron Blake having agreed to file for interim casino authorization (ICA) and to place his Webb shares in an ICA trust; and

The Commission having considered the entire record in this matter, including the statements and arguments of counsel (Deputy Attorney General James C. Fogarty appearing for the Division of Gaming Enforcement, Brian Spector, Esq., appearing for Webb and Claridge, Paul M. O'Gara, Esq., appearing for Robert Blake and Aaron Blake, and Brian Molloy, Esq., appearing on behalf of all other respondents), at its public meeting of December 20, 1989, and having determined, for the reasons set forth on the record, that Aaron Blake's qualification is required pursuant to N.J.S.A. 5:12-85(d)(1), that his qualification is not waived, and that in accordance with Aaron Blake's certification, he be required to file a completed ICA application and a fully executed and approved ICA trust agreement by January 19, 1990;

IT IS on this 22nd day of December, 1989, ORDERED that:

Aaron Blake file a completed Interim Casino Authorization application and a fully executed and approved Interim Casino Authorization trust agreement by January 19, 1990.

AND IT IS FURTHER ORDERED THAT copies of this order be served forthwith upon the parties in this matter.

NEW JERSEY CASINO CONTROL COMMISSION

Valerie H. Armstrong, Vice-Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-154
ORDER NO. 89-50-28(c)

State of New Jersey, Department Of Law and Public Safety, Division of Gaming Enforcement,	
Complainant,	ORDER
v.	
Calmark Associates, L.P., Calmark Properties, Inc., Calmark Financial Corporation, Calmark Holding Corporation, Uri Sheinbaum, Joe H. Freeman, III, Donald Brumlik, Ron Aubert, Derrick Ashcroft, Joe Carey, Jim Ciontea, Mike Costa, Gerald Goldman, Bill Gould, John Huskey, Robert Loeffler, John Scott, Matt Smith, Ygal Sonenshine, Robert Weiss, Haig Bagerdjian, John Cashion, Alan Jacobs, East Shore Associates, L.P. A/K/A ESA Associates, L.P., North Shore Associates, Sanford J. Hillsberg, Robert Blake, Aaron Blake, Ronald A. Fischman, Steven Cooperman, Del Webb Corporation, and The Claridge at Park Place, Inc.,	
Respondents.	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a complaint by the Division of Gaming Enforcement, and it appearing that Robert Blake is the holder of 39,600 shares of common stock of Del Webb Corporation (Webb), a qualifier of casino licensee, The Claridge at Park Place, Incorporated (CPP); that Robert Blake is also a general partner of ESA Associates, L.P. (ESA), which,

together with Calmark Associates, L.P., and other persons (collectively referred to as "the Reporting Group"), was denied a waiver of qualification and was ordered to file a completed application for interim casino authorization (ICA), including a fully executed and approved trust agreement, by April 28, 1989 (see Order No. 89-13-8); and

It appearing that, on April 26, 1989, the Reporting Group was granted an extension of time in which to file its completed ICA application until ten days after the Commission ruled on a petition (PRN 119903) for reconsideration (see Order No. 89-17-22); and

It appearing that, on May 24, 1989, the Commission denied that request for a reconsideration and ordered that pursuant to Order No. 89-17-22, the Reporting Group must file its completed ICA application by June 5, 1989 (see Order No. 89-21-15); and

It appearing that, on May 31, 1989, the Commission granted the Reporting Group an additional extension of time in which to file its completed ICA application until 10 days after the Commission ruled on a petition (PRN 178902) for reconsideration (see Order No. 89-22-32); and

It appearing that, on September 27, 1989, the Commission denied that second request for reconsideration and ordered that, pursuant to Order No. 89-22-32, the Reporting Group must file its completed ICA application, including a fully executed and approved trust agreement, by October 10, 1989, and further ordered that Robert Blake be granted an extension of time until October 11, 1989, to address whether the Webb securities in his

own name should be part of the corpus of the Reporting Group ICA trust (see Order No. 89-39-12); and

It appearing that Robert Blake, as a general partner of ESA, did not file his Personal History Disclosure Form by October 10, 1989; and

It appearing that on October 20, 1989, the Commission ordered that the Webb securities held by Robert Blake be part of the corpus of the ICA trust which the Commission ordered the Reporting Group to submit by October 10, 1989, see Order No. 89-293(c); and

It appearing that the Reporting Group, including Robert Blake, failed to file an ICA application by October 10, 1989, as ordered by the Commission, (see Order No. 89-39-12); and

The Commission having considered the entire record in this matter, including the arguments of counsel (Deputy Attorney General James C. Fogarty appearing for the Division of Gaming Enforcement, Brian Spector, Esq., appearing for Webb and Claridge, and Paul M. O'Gara, Esq., appearing for Robert Blake), at its public meeting of December 20, 1989, and having determined, by a vote of 4-0 (Commissioner Frank J. Dodd abstaining), for the reasons set forth on the record, that Robert Blake is per se disqualified because of his failure to file an ICA application in a timely manner, as required by N.J.S.A. 5:12-95.12(b) and Commission Order No. 89-39-12 and No. 89-293(c);

IT IS on this 21st day of December, 1989, ORDERED THAT:

1. Robert Blake shall, by April 19, 1990, divest all of his Webb securities, subject to the prior approval of the Commission, except in the case of open market sales;

2. No dividends or interest shall be paid by CPP or Webb, or be received by Robert Blake with respect to the Webb securities held by Robert Blake;

3. Robert Blake shall not exercise, directly or through any trustee or nominee or otherwise, any rights conferred by such Webb securities, and CPP and Webb shall not allow or permit Robert Blake to exercise any such rights;

4. No remuneration in any form, for services rendered or otherwise, shall be paid by CPP or Webb, or be received by Robert Blake, with respect to such securities;

5. Robert Blake shall not receive any proceeds of the disposition of his Webb securities over the actual cost of acquisition and that any proceeds over actual cost be deposited in the Casino Revenue Fund, see N.J.S.A. 5:12-95.14; and

6. Webb and Claridge shall continue to prosecute diligently and in good faith their pending civil divestiture action against Robert Blake.

AND IT IS FURTHER ORDERED THAT copies of this order be served forthwith upon the parties in this matter.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-154
ORDER NO. 89-50-28(d)

State of New Jersey, Department Of Law and Public Safety, Division of Gaming Enforcement,	:	
Complainant,	:	ORDER
v.	:	
Calmark Associates, L.P., Calmark Properties, Inc., Calmark Financial Corporation, Calmark Holding Corporation, Uri Sheinbaum, Joe H. Freeman, III, Donald Brumlik, Ron Aubert, Derrick Ashcroft, Joe Carey, Jim Ciontea, Mike Costa, Gerald Goldman, Bill Gould, John Huskey, Robert Loeffler, John Scott, Matt Smith, Ygal Sonenshine, Robert Weiss, Haig Bagerdjian, John Cashion, Alan Jacobs, East Shore Associates, L.P. A/K/A ESA Associates, L.P., North Shore Associates, Sanford J. Hillsberg, Robert Blake, Aaron Blake, Ronald A. Fischman, Steven Cooperman, Del Webb Corporation, and The Claridge at Park Place, Inc.,	:	
Respondents.	:	

This matter having been opened to the New Jersey Casino Control Commission on the motion of Robert Blake (Paul M. O'Gara, Esq., appearing on behalf of Robert Blake and James C. Fogarty appearing on behalf of the Division of Gaming Enforcement) for an unconditional stay pending appeal of Order No. 89-50-28(c); and it appearing that Robert Blake is the

holder of 39,600 shares of common stock of Del Webb Corporation (Webb), a qualifier of casino licensee, The Claridge at Park Place, Incorporated (CPP); that at the Commission's public meeting of December 20, 1989, Robert Blake was found per se disqualified as a Webb security holder and ordered, inter alia, to divest all of his Webb securities by April 19, 1990, see Order No. 89-50-28(c); and

The Commission having considered the entire record in this matter, including the arguments of counsel at its public meeting of December 20, 1989, and having determined, for the reasons set forth on the record, that the request for an unconditional stay should be denied,

IT IS on this 22nd day of December, 1989, ORDERED that the request of respondent Robert Blake for an unconditional stay of Order No. 89-50-28(c) pending appeal is denied,

AND IT IS FURTHER ORDERED that copies of this order be served forthwith upon the parties in this matter.

NEW JERSEY CASINO CONTROL COMMISSION

Valerie H. Armstrong, Vice-Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-M-4
LICENSE NO. 01759-11
OAL DOCKET NO. CCC 6909-88
ORDER NO. 89-47-16

QUALIFICATION AND RENEWAL
APPLICATION OF JESUS F. CAMPO

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 5th day of December 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application to renew the casino key employee license of Jesus F. Campo is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

IT IS FURTHER ORDERED that the issue concerning Jesus F. Campo as a "qualifier" of TropWorld Hotel and Casino is moot.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 1/10
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6909-88
AGENCY DKT. NO. 89-M-4

JESUS F. CAMPO,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Joseph S. Lukomski, Esq., for petitioner (Rovner, Allen, Seiken & Rovner, attorneys)

Mitchell Schwefel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: August 31, 1989 Decided: October 16, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the suitability of the petitioner for renewal of his casino key employee license and as a qualifier of the casino licensee. The position in question is Vice President of International Marketing for the TropWorld Hotel and Casino. By letter to the Casino Control Commission dated August 25, 1988, the Division of Gaming Enforcement stated that it could not recommend granting renewal of the petitioner's casino key employee licensure and qualification. Based upon the information set forth in its letter concerning the petitioner's 1984, 1985 and 1986 federal income tax returns, the Division has submitted the matter to the sound discretion of the Casino Control Commission. These are the issues to be resolved:

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1. Has the petitioner demonstrated by clear and convincing evidence that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee pursuant to section 89b(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), in light of various alleged discrepancies in the federal income tax returns filed by the petitioner for the years 1984, 1985 and 1986.

2. Has the petitioner demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino key employee pursuant to section 89b(2) of the act, in light of various alleged discrepancies in the federal income tax returns filed by the petitioner for the years 1984, 1985 and 1986.

PROCEDURAL HISTORY

On September 22, 1988, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A telephone prehearing conference was held on October 13, 1988, and the matter was originally scheduled to be heard on December 21, 1988. However, the matter was rescheduled from that date because of a change in the petitioner's counsel.

The matter was then rescheduled to be heard on February 16, 1989. However, it was necessary to adjourn the matter from that date because petitioner's counsel had been injured in an automobile accident. The hearing was then scheduled to be heard on April 17, 1989. An adjournment was granted when the counsel for petitioner had an unavoidable criminal court conflict. The matter was then scheduled to be heard on June 15, 1989. However, petitioner's counsel left her law firm and his new counsel requested an adjournment in order to review the voluminous discovery materials. The first hearing session in this matter was conducted on July 17, 1989. The second hearing session was held on August 31, 1989. The record closed on that date.

FINDINGS OF FACT

The materials facts in this matter are undisputed. The petitioner is a 51 year-old resident of Margate, New Jersey. He was first licensed by the Casino Control

Commission as a casino key employee on November 10, 1981. The petitioner is presently Director of Player Development for the TropWorld Casino Hotel.

The petitioner testified that he first came to the United States from Cuba in 1961 as a political exile. In 1964, the petitioner started work at a casino hotel in Las Vegas, Nevada, as a porter. By 1964, he had become an assistant purchasing agent at the Alladin Casino in Las Vegas. In 1972, the petitioner became a dealer at the Tropicana Hotel in Las Vegas. He was subsequently promoted to floor person and assistant pit boss. In 1981, the petitioner came to New Jersey to work in the Tropicana baccarat pit. According to the petitioner, the casino wanted to promote business with its Spanish-speaking customers. In all of his years of employment with a variety of casinos, the petitioner has never received a negative write-up or been disciplined.

A number of witnesses testified on the petitioner's behalf. Peter Muth is a licensed real estate broker in Margate. He assisted the petitioner to find a home and he also helped with mortgage loan applications. Mr. Muth has become close to the petitioner and his family and he sees the petitioner about twice a week. He believes that the petitioner's financial stability and integrity is beyond approach and Mr. Muth has never heard any derogatory information about the petitioner. He noted that the petitioner kept detailed appointment books and there was no difficulty finding financial records in their business dealings.

Norman DeYoung is a Margate resident who also testified on behalf of the petitioner. Mr. DeYoung is a teacher and also works as a surveillance officer. He lives across the street from the petitioner. Mr. DeYoung testified that he has never heard any negative information about the petitioner. Cherry Hill resident Thomas Venuto testified that he first met the petitioner at the Tropicana Casino. Mr. Venuto is a patron of the casino, but the petitioner has never been his host and has never authorized any complimentary services for Mr. Venuto. In the witness's opinion, the petitioner is held in the highest regard at the casino and he has a reputation for honesty and integrity of the highest standard.

Margate resident Ralph Vogel also testified on behalf of the petitioner. He has known the petitioner since December 1982, when they were both employed in the marketing department at the Tropicana. Mr. Vogel is aware of the petitioner's reputation in the casino industry. He characterized the petitioner as having

extremely high ethics, and as a man who has kept his word. To Mr. Vogel's knowledge, the petitioner has been financially competent.

Many letters of reference and recommendation on behalf of the petitioner were admitted into evidence as Exhibits P-2 through P-26. These writers know the petitioner from variety of contexts; personal, social, business, and cultural. Each writer has explained why he believes the petitioner to be a man of high moral character and integrity. It is clear that the petitioner enjoys a fine reputation.

Certified Public Accountant Michael Mincer testified that he has known the petitioner since around 1982, and he has prepared the petitioner's income tax returns from 1981 through 1988. According to Mr. Mincer, the petitioner was less of a record keeper in the beginning than he is today. In addition, the petitioner has a better understanding of the need to keep records.

Mr. Mincer also testified that he has assisted the petitioner in preparing annual financial statements to be filed with the Division of Gaming Enforcement. He has provided tax consultation to the petitioner, including answering questions about deductibility of expenses. When asked to characterize the petitioner's financial stability, integrity and responsibility, Mr. Mincer stated that the petitioner's expenditures are not out of line with his income; he pays his bills, and he is a straightforward, honest and responsible person.

Mr. Mincer stated that his accounting firm prepares in excess of 1,000 income tax returns per year. The normal process is to lead the client through each item on the tax return, line by line, describing areas of opportunity and restriction. A preliminary result will usually be prepared for the client before he leaves the office, and this normally takes about three-quarters of an hour. Clients will bring whatever documents they feel are appropriate. In the case of the petitioner, he would use a small brown bag or his pockets to bring documents. The petitioner speaks with an accent and Mr. Mincer noted that reviewing certain issues with the petitioner, particularly technical areas, took more effort than average.

Mr. Mincer testified concerning questioned items on the petitioner's Federal Income Tax Returns for 1984, 1985 and 1986. On the 1984 return (Exhibit DGE-5), Schedule A identifies two interest deductions in the amount of $302 for Visa credit cards. Mr. Mincer stated that this kind of detailed listing on the return was not required. It was his opinion that the petitioner brought among his pile of year-end

statements from credit cards two statements for the same card. There was no intent to double up on the deduction and he has prepared an amended 1984 return to reduce the reductions by $302 and increase the taxable income by the same amount (Exhibit P-27).

Testifying on his own behalf, the petitioner stated that he had moved from the casino floor into Tropicana's marketing department in 1984. Until that time, he had not been reimbursed for expenses and he did not have experience keeping receipts. In regard to the $302 Visa interest deduction, the petitioner testified sincerely that it had simply been a mistake to show the deduction twice for the same amount. Although he believed that the return was accurate at the time it was prepared, the petitioner candidly acknowledged that there are mistakes and he stated that the return will be amended.

The next questioned item on the 1984 return concerned a deduction for a United Way charitable contribution. A deduction in the amount of $256 was reported. At that time, Mr. Mincer and the petitioner felt that the amount was accurate. However, it appears that the original number shown on the United Way Pledge Card (Exhibit DGE-16) was $156. Mr. Mincer stated that the 1984 return will be amended to adjust the deduction down to the original number. The petitioner testified that the actual contribution was $156. He does not know how the figure $256 was recorded on the receipt. Nevertheless, he stated that claiming $256 was a simple mistake and he has agreed to amendment of the return.

The next discrepancy on the 1984 return concerned a capital loss in the amount of $520 shown on Schedule D for the sale of securities. According to Mr. Mincer, he thoroughly discussed this item with the petitioner at the time the return was prepared and he believed the amount was the best estimate available. He explained that the brokerage records were not available at the time the return was prepared and, lacking a document, the accountant makes the best estimate possible. Mr. Mincer acknowledged that the brokerage record which he has recently seen indicates that the capital loss was actually $7.30, and the return is being amended to reflect this amount. Mr. Mincer added that the petitioner had been correct about some of the data which he had supplied, but was mistaken about some of the other data.

Testifying about this item, the petitioner stated that he had given Mr. Mincer the information on capital losses from the top of his head. The paper work from the

brokerage house had not been available at the time. The petitioner believed that the information was accurate at the time the return was prepared. Since it has been determined that the information was not accurate, the petitioner has agreed to amend the return.

The next item concerns a deduction on the petitioner's 1984 return for tax preparation expenses in the amount of $150. Mr. Mincer stated that the tax preparation fee had actually been reduced to zero because of referrals sent by the petitioner. However, his accounting firm provided various services to the petitioner throughout the year and these services were worth $150. Mr. Mincer recorded the deduction on the return and the petitioner had nothing to do with it. He stated that the return will not be amended to change this item since he sincerely believes that it was 100 percent correct to have taken the deduction. The petitioner noted in his testimony that the item had not been discussed with him prior to the return being prepared.

Mr. Mincer testified that he is not aware of any other problems concerning the 1984 return. In addition, he noted that the Internal Revenue Service has not raised any problem concerning the petitioner's returns for 1984, 1985 and 1986. By filing amended returns for these years, the petitioner will reopen the statute of limitations and will also increase his tax liability.

Mr. Mincer testified concerning several discrepancies on the petitioner's income tax return for 1985 (DGE-6). Among the deductions, a JC Penny interest deduction appears to have been taken twice. Mr. Mincer stated that there were probably two monthly statements for the same account which both contained the year-end interest. Since it was a mistake to have reported the reduction twice, the amount will be adjusted on the petitioner's amended 1985 tax return (Exhibit P-28) to eliminate the duplicate deduction. The petitioner confirmed in his testimony that the deduction was mistakenly entered twice and he agreed that the return should be amended.

According to Mr. Mincer, the petitioner took a $5,345 deduction on his 1985 income tax return for marketing and employee expenses. According to Mr. Mincer, he brought up the topic with the petitioner and together they tried to find unreimbursed business expenses. The petitioner had not taken a similar deduction on his 1984 return, because he had been working as a pit boss and had not incurred this type of expenses. He had started to develop customers with the permission of

top management at the Tropicana and the petitioner now had various marketing expenses. According to Mr. Mincer, they discussed expenses for gifts, dinners, and transportation which the petitioner may have incurred.

Mr. Mincer testified that marketing and employee expenses can be deducted if they exceed the amount of reimbursement. The figure arrived at was the result of his discussion with the petitioner. Both believed that it represented their best estimate. Mr. Mincer enumerated the possibilities to the petitioner and explained them. However, in the absence of records to support the deductions, the 1985 return will be amended. Testifying on his own behalf, the petitioner stated that he did not keep a reimbursement log in 1985. He believes that the deduction figure which he arrived at with Mr. MIncer's help was accurate. He still has no reason now to believe that it is not accurate, but he has agreed to an amendment of the return. The deductions will not be eliminated entirely. Rather, he will work with Mr. Mincer to gather the necessary documentation to support some deductions and the return will be amended appropriately.

As with the previous year's return, Mr. Mincer included a tax preparation deduction on the petitioner's 1985 return. He explained that the petitioner had paid the accounting firm $100 for tax services during the year; therefore, the petitioner was entitled to the deduction. The petitioner testified that Mr. Mincer included this deduction on the return. The petitioner does not believe that this item needs to be amended.

A deduction for $399 was included on the 1985 return for an answering machine used solely for business. According to Mr. Mincer, the deduction was taken in the amount of $399 based upon the petitioner's statement to him concerning its cost. The petitioner later stated that the cost of an answering machine was $299. Therefore, Mr. Mincer is correcting the deduction on the amended return. The petitioner testified that he actually purchased two answering machines in 1985. One was for about $399 and the other cost about $299. The petitioner stated that he purchased the second machine because the first one broke. The petitioner feels he is entitled to the deduction because he paid for both machines in 1985.

The 1985 return includes a $180 deduction for a tuxedo and accessories. It was Mr. Mincer's understanding that the tuxedo was purchased for $80 and that the petitioner purchased other accessories in the amount of $100. The petitioner added $100 to the receipt for the tuxedo. Mr. Mincer knows that he and the petitioner

discussed this item before listing it on the tax return. Mr. Mincer suggested that the return could be amended to lower the deduction to $80. The petitioner confirmed in his testimony that he had purchased $80 worth of items by check, and later the same day, purchased $100 worth of items with cash. Consequently, the petitioner changed the receipt from $80 to $180. He does not agree that the return should be amended downward, since he did spend the money on deductible items.

The final questioned item on the 1985 tax return was a deduction for phone expenses taken in the amount of $720. Mr. Mincer testified that he has no specific recollection of this deduction, but because he and a client will develop most deductions by discussing them, he believes that he did discuss this matter with the petitioner. He has no reason to believe that the amount is not accurate, but he acknowledged that the amount is being amended downward to $600. The petitioner testified that he believed the $720 amount was accurate at the time the return was filed. However, he stated that if he provided a lower figure of $600 to the Division investigator, the amount could be adjusted downward in the amended return.

Several items were questioned in regard to the petitioner's 1986 return (DGE-7). The petitioner took a sales tax deduction on the purchase of an automobile at a price of $12,000. According to Mr. Mincer, his understanding at the time the return was prepared was that the price was $12,000. However, no documents were available at that time. Since learning that the purchase price was possibly $11,500, Mr. Mincer has recommended that the return be amended downward to reflect the lower purchase price. As a result, the deduction will be reduced by $30. The petitioner testified that he has agreed to lower the deduction on an amended return. However, the petitioner testified sincerely that he believed the return was correct at the time it was filed. Mr. Mincer also noted that he wrote to the car dealer asking for a copy of the invoice, but he received no reply.

The return also reveals an interest expense deduction in the amount of $3,342. This was for a loan financed by the Ford Motor Credit Company. According to Mr. Mincer, it was an error to use the foregoing figure which appeared in a document from the creditor (Exhibit DGE-13). The correct figure was $711.03, which also appeared in the document. Since the incorrect figure was inadvertently used in the tax return, it will be adjusted downward in the amended return to reflect a $2,631 difference in the deduction. The petitioner testified that at the time the return was prepared, he had not understood the difference between principle and interest in

regard to this deduction. He agrees that the amount should be changed downward to reflect the interest deduction. Both Mr. Mincer and the petitioner noted that this return had been prepared on April 15, 1987, and it is fair to infer that the process was somewhat rushed.

A $1,000 deduction for a charitable contribution to the United Way was questioned. Mr. Mincer testified that he and the petitioner believed that the $1,000 deduction was a correct figure at the time the return was prepared. However, they later learned that the petitioner's payroll office had mistakenly deducted only $196.35. As a result, the amended return will show an adjustment to reflect the deduction in the lower amount. According to the petitioner, he believed that his employer was deducting the necessary amounts to meet his pledge of $1,000. He agrees that the return should be amended to reflect the actual amount contributed.

Mr. Mincer testified that a deduction was taken in the amount of $1,920 for undocumented contributions. He stated that the Internal Revenue Service could still accept the undocumented deductions, but because there are no receipts for them, they will be eliminated in the amended return. Mr. Mincer also explained that the team working on behalf of the petitioner did not understand the significance of this situation until just recently; they have not worked hard enough on this to recover the necessary documentation. The petitioner testified sincerely that he made the donations in cash at various times throughout the year and that he was entitled to the deduction. However, he has agreed to amend the return to eliminate the deductions, because there are no receipts.

The 1986 return reflects a $250 itemized deduction for business credit card charges. According to Mr. Mincer, he did not realize at the time the return was prepared that the item had been reimbursed by the petitioner's employer. Thus, it was either his error or the petitioner's error in not having the reimbursement information. The return will be amended to reflect that no deduction is being taken for this amount. According to the petitioner, he felt that this was a legitimate deduction at the time his return was prepared. Later he learned that the item had been reimbursed by the Tropicana and the petitioner has agreed to eliminate the deduction on his amended return.

The 1986 return also reveals a deduction for business trips. Among them was a trip to Mexico. It was subsequently learned that the trip was taken in 1985. Thus, the trip will be deducted on the amended 1985 return and eliminated on the

amended 1986 return. The petitioner testified that he travels quite a bit; enough to mistake what year a trip was taken. He acknowledge that he mistakenly told Mr. MIncer that his Mexico trip was taken in 1986. Thus, the $369 deduction was an error. The petitioner also explained that he had not kept receipts in 1984 and 1985. He now understands their importance and he will keep them for everything.

The petitioner's 1986 income tax return contains a deduction for promotional expenses in the amount of $2,300. Mr. Mincer testified that he discussed the possibility of this expense with the petitioner, and the possible amount involved. They also discussed the question of reimbursement. He believes that the figure of $2,300 is accurate, but based on the lack of documentation for the figure, it will be eliminated entirely on the petitioner's amended return. The petitioner testified that the figure represented expenses which he and his wife incurred as part of the petitioner's casino marketing efforts. However, he did not keep good records. Having learned his lesson, he now keeps the necessary supporting documents. The petitioner testified sincerely that he believes he was not reimbursed for the total of $2,300 in expenses. He is trying to obtain the necessary documents to support the deduction. To the extent that he cannot obtain the documents, the petitioner agrees that the deduction should be adjusted downward or eliminated in the amended return.

The petitioner deducted the cost of a desk set in the amount of $625 on his 1986 return. Mr. MIncer testified that this is an item which he would have discussed with the petitioner before its inclusion in the return. However, he is not aware of any documentation to support the deduction. Although he believes the petitioner is entitled to the deduction, it will be eliminated from the amended return.

The petitioner testified that he did purchase a desk set for about $600. Because he purchased the items from a friend, he did not get a receipt. If he is unable to obtain a receipt now, his return will be amended to eliminate the deduction.

The 1986 return reveals a deduction for a personal safe in the amount of $525. Mr. Mincer knows that the item would have been discussed with the petitioner before it was included in the return. He subsequently learned that the cost for the safe was $249. Thus, the return will be adjusted downward to reflect the lower amount. The petitioner testified that he is not sure exactly how much the safe cost. When he was interviewed by the Division agent, he provided a figure off the top of his head. He agreed that the return should be amended to reflect the lowest figure.

The 1986 return reflects a deduction for tuxedo and accessories in the amount of $1,500. Mr. Mincer testified that there is no documentation supporting this deduction. The return will be adjusted downward to eliminate the deduction. However, a $200 cleaning expense deduction will still be taken. It was the testimony of the petitioner that he did purchase a tuxedo in 1986. Since he must often wear a tuxedo for business, he owns five. The petitioner stated that he does not want to eliminate the deduction entirely, because he did make the purchase. However, he acknowledged that he does not have a receipt.

There is also a deduction on the 1986 return for a car phone purchase and service in the amount of $2,140. Mr. Mincer described the taking of this deduction on the 1986 return as a mental error, since the purchase was not made until April 1987. It has not yet been decided whether the deduction will be taken on an amended 1987 return. However, it will be eliminated from the 1986 return. The lease for the phone was admitted into evidence as Exhibit DGE-15. The petitioner testified that he mentioned the recent purchase of the car phone to Mr. Mincer as the return was being prepared on April 15, 1987. The petitioner believes that Mr. Mincer mistakenly understood that the purchase had been made in 1986. The petitioner agrees that the deduction on the 1986 return should be eliminated.

It was the testimony of Mr. Mincer that the petitioner has seen a dramatic increase in income and consequently, in business deductions. The higher income and deduction levels were new to the petitioner and Mr. Mincer suggested that he should have helped the petitioner to better understand the tax preparation process, including record keeping requirements. With the higher income, the petitioner has a greater need to support his deductions by keeping better records.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino key employee license demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to section 89b(2) of the act. In addition, such an applicant

must demonstrate that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee, pursuant to section 89b(1) of the act. The petitioner's background has been thoroughly reviewed by the Division of Gaming Enforcement. The Division has raised questions concerning only certain deductions on three federal income tax returns filed by the petitioner. The credible evidence in the record establishes that there were some inadvertent mistakes made on each of these returns. In addition, some deductions lack supporting documentation. However, it is also clear from the credible evidence in the record that the deductions were all taken in the good faith belief that they were legitimate.

The petitioner's financial record keeping responsibilities have increased as he has moved into the area of casino patron marketing. The petitioner realizes that he must keep careful records to support all of his income tax deductions. In addition, the petitioner is filing amended tax returns for the period in question and will pay any resulting additional tax which will be due. In this way, the petitioner will correct any mistakes on his original returns and he will eliminate any legitimate but unsupported deductions. Finally, numerous witnesses and writers have credibly attested to the petitioner's honesty and integrity.

Based upon the foregoing undisputed facts and discussion, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that he possesses the financial stability, integrity and responsibility required for licensure as a casino key employee, pursuant to section 89b(1) of the Casino Control Act. I further **CONCLUDE** that the petitioner has demonstrated by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino key employee, pursuant to section 89b(2) of the act. Therefore, I **CONCLUDE** that the petitioner has established his suitability as a qualifier of the casino licensee and that the petitioner's application for renewal of his casino key employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Jesus F. Campo for renewal of his casino key employee license be **GRANTED**.

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

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

October 16, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

10/16/89
Date

Lynn Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 19 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 United Way contribution acknowledgment dated November 7, 1986

P-2 Letter dated May 19, 1989

P-3 Letter dated November 16, 1988

P-4 Letter dated November 17, 1988

P-5 Letter dated November 19, 1988

P-6 Letter dated November 23, 1988

P-7 Letter dated November 10, 1988

P-8 Letter dated November 10, 1988

P-9 Letter dated November 7, 1988

P-10 Letter dated November 15, 1988

P-11 Letter dated November 15, 1988

P-12 Letter dated November 15, 1988

P-13 Letter dated November 9, 1988

P-14 Letter dated November 1, 1988

P-15 Letter dated November 1, 1988

P-16 Letter dated October 31, 1988

P-17 Letter dated June 26, 1988

P-18 Congressional Record dated September 6, 1984

P-19 Congressional Record dated May 19, 1988

P-20 Commemorative Task Force Delegate Pass

P-21 Congressional Record dated May 21, 1985

P-22 Commendation for Volunteer Service to the City of New York

P-23 Letter dated November 28, 1988

P-24 Letter dated November 28, 1988

P-25 Letter dated December 1, 1988

P-26 Letter dated December 22, 1988

P-27 Amended 1984 Tax Return

P-28 Amended 1985 Tax Return

P-29 Amended 1986 Tax Return

P-3 Letter dated August 18, 1989

For respondent:

DGE-1 1980 Tax Return

DGE-2 1981 Tax Return

DGE-3 1982 Tax Return

DGE-4 1983 Tax Return

DGE-5 1984 Tax Return

DGE-6 1985 Tax Return

DGE-7 1986 Tax Return

DGE-8 1987 Tax Return

DGE-9 Lease Agreement

DGE-10 Deduction worksheet

DGE-11 Tuxedo expense documentation

DGE-12 Brokerage documentation

DGE-13 Interest expense documentation

DGE-14 Player development documentation

DGE-15 Telephone lease agreement

DGE-16 United Way pledge card

DGE-17 Safe inventory

DGE-18 Brokerage documentation

DGE-19 Expense documentation

DGE-20 Expense documentation

DGE-21 Sworn interview transcript

DGE-22 Sworn interview transcript

WITNESSES

For the petitioner:

Peter Muth
Norman DeYoung
Thomas Venuto
Michael Mincer
Ralph Vogel
Jesus F. Campo

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3459-88
AGENCY DOCKET NO. 88-316
ORDER NO. 89-38-22

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

Petitioner,

v.

CARNEGIE DELICATESSEN, INC. AND FRANCINE, INC.,

Respondents.

ORDER

A hearing having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission), and exceptions having been filed, and the Commission having considered the entire record of these proceedings at its public meeting of September 20, 1989, and having rendered a decision at its public meeting of October 25, 1989,

IT IS on this 31st day of October 1989,

ORDERED that the initial decision is modified to eliminate any reference to the pre-criminal code concepts of mens rea and criminal intent, and to specifically find that respondents acted purposely to obtain property by means of deception as those terms are used in N.J.S.A. 2C:2-2B(1) and N.J.S.A. 2C:20-4, and

IT IS FURTHER ORDERED that, with the above modifications, the initial decision is adopted insofar as it finds that respondents have committed disqualifying offenses under section 86 of the Casino Control Act but have adequately demonstrated their rehabilitation from such disqualification and therefore their casino service industry licenses shall not be revoked, and

IT IS FURTHER ORDERED that the initial decision is rejected insofar as it calls for the imposition of monetary fines and the placing of reprimands in the respondents' files, and no penalty shall be imposed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3459-88
AGENCY DKT. NO. 88-316

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
CARNEGIE DELICATESSEN, INC., AND
FRANCINE, INC.,
Respondents.

Frederick J. McDonough, Deputy Attorney General, for the petitioner, Division of Gaming Enforcement (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Frederic Pearson, Esq., for the respondent, Carnegie Delicatessen, Inc. (Pearson and Shapiro, attorneys)

Joseph A. Fusco, Esq., for the respondent, Francine, Inc. (Ribis, Graham, Verdon & Curtin, attorneys)

Record Closed: April 21, 1989 **Decided:** July 7, 1989

BEFORE BEATRICE S. TYLUTKI, ALJ:

I-PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on March 30,

1988, against the respondents, Carnegie Delicatessen, Inc. (Carnegie), and Francine, Inc. (Francine), both of whom have a casino service industry license. Carnegie operates a restaurant and Francine operates a women's apparel shop in the Sands Hotel/Casino and Country Club (Sands) in Atlantic City. The Sands is owned by Greate Bay Hotel and Casino, Inc. (Greate Bay), a subsidiary of Pratt Hotel Corporation.

In its complaint, the Division alleges that the respondents engaged in certain illegal and inappropriate transactions relating to the Sands' Red Carpet Program, which had an adverse impact upon their respective abilities to show by clear and convincing evidence their continuing good character, honesty and integrity as required by N.J.S.A. 5:12-92c, N.J.A.C. 19:43-1.3(c). Also, the Division alleges that this conduct by the respondents constitutes the offenses of theft by deception, a violation of N.J.S.A. 2C:20-4, and conspiracy, a violation of N.J.S.A. 2C:5-2, which are statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In its complaint, the Division seeks as relief:

1. The imposition of a civil fine on Carnegie and the placement of a letter of reprimand in the Division's file on the company.

2. The imposition of a civil fine on Francine and the placement of a letter of reprimand in the Division's file on the company.

3. The entry of an order that Carnegie make restitution to Greate Bay in an amount equal to the damages suffered by the latter as a result of the respondent's wrongful reporting of its gross sales.

4. Such other relief as the Commission deems just.

Both respondents requested a hearing and the matter was transmitted to the Office of Administrative Law on May 9, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

In the letter transmitting the matter to the Office of Administrative Law, Dennis Daly, Senior Assistant Counsel for the Commission, stated that:

All parties should note that, inasmuch as the DGE's complaint alleges that the respondents have engaged in conduct constituting a disqualifying offense pursuant to N.J.S.A. 5:12-86(c), revocation of licensure, not a monetary penalty, is the appropriate "sanction" to be considered. See, State v. Wynette Harris, Docket No. 81-18 (Final Commission Decision June 29, 1983).

A prehearing conference was held by way of a telephone conference call on August 26, 1988, and at that time the parties agreed that the issues in this matter are:

1. Whether either or both of the respondents engaged in conduct which constitutes a criminal violation pursuant to N.J.S.A. 2C:20-4 (theft by deception), and/or N.J.S.A. 2C:5-2 (conspiracy), which is a disqualification pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g.

2. Whether either or both of the respondents can demonstrate by clear and convincing evidence that they have the reputation for good character, honesty and integrity as required for continued licensure, pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3(c).

3. What is the appropriate penalty, if any, to be imposed in this matter and against whom should it be imposed?

During the prehearing conference, it was noted that issue three, as set forth above, includes the relief specified in the Division's complaint, as well as the possible revocation of the casino service industry licenses of both respondents.

There were eight hearing days, which were held between December 6, 1988, and January 17, 1989, at the Atlantic County Courthouse in Atlantic City, New Jersey.

At the conclusion of the presentation of the Division's case, Joseph A. Fusco, Esq., on behalf of Francine, and Frederic H. Pearson, Esq., on behalf of Carnegie, separately and jointly moved to dismiss the matter on the basis that the Division had not presented a prima facie case. The respondents argued that the Division had not produced

evidence to show that either or both of them had engaged in any illegal conduct involving more than $500, which constitutes a violation of either N.J.S.A. 2C:20-4 (theft by deception) or N.J.S.A. 2C:5-2 (conspiracy). Further, they argued that since the Division had not shown any criminal action, it had also failed to show any improper action which impugned the respondents' good character, honesty and integrity. Therefore, the respondents argued that they did not have to present any evidence to establish their good character, honesty and integrity. As part of this argument, the respondents noted that the Sands has initiated civil actions to terminate the lease agreements with both Francine and Carnegie and that both of the respondents have filed counter-petitions alleging damages, and that after its investigation, the Division of Criminal Justice decided not to initiate any criminal prosecution regarding this matter (R-19).

Deputy Attorney General Frederick J. McDonough, on behalf of the Division, disagreed and argued that even though no criminal complaints had been filed against the respondents, their actions constituted the criminal offenses of theft by deception and conspiracy, both of which are disqualifying offenses pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g. After reviewing the evidence and the arguments of the parties, I orally concluded that the Division had presented a prima facie case and I denied the motions to dismiss.

At the conclusion of the hearing, I requested that the parties submit briefs. Mr. McDonough, on behalf of the Division, submitted a brief on March 19, 1989, and Mr. Fusco, on behalf of Francine, submitted a brief on March 10, 1989. Mr. Pearson, on behalf of Carnegie, did not submit an initial brief; however, he submitted a reply brief on April 14, 1989. Mr. McDonough did not submit a reply brief and Mr. Fusco's reply brief was received by my office on April 21, 1989.

The record in the matter closed on April 21, 1989. At my request, the period of time for the filing of the initial decision was extended until July 7, 1987 (Order of Extension, dated June 8, 1989).

II - FACTUAL FINDINGS

Except as noted, I FIND that the relevant facts in this matter are not in dispute.

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A - SANDS FOOD COURT

In 1983, the Sands initiated an expansion program of both the casino and the hotel facilities. As part of this expansion, the Sands developed a food court on the third and fourth floors of the hotel, and hired a consultant to arrange for well-known food vendors to open food court outlets in order to attract casino patrons.

Initially, there were twelve food and snack outlets on the third floor (D-6), of which two were owned by the Sands. On the fourth floor were Carnegie, Francine, a gift shop and a room which was to be used as a lounge by patrons who arrived by bus. Over the years, the Sands has taken over a number of the food and snack outlets, and it now operates six of them.

In addition, on the second floor of the hotel, the Sands operates a number of gourmet restaurants as well as a nightclub.

B - FRANCINE, INC.

Francine is owned by Myron Kaminsky and his wife, Suzanne Kaminsky. Mr. Kaminsky owns 60% and his wife owns 40% of the stock of Francine.

Mr. Kaminsky is approximately 59 years old. He was in the U.S. Army, served active duty in Korea, and was honorably discharged in 1957, after having served several years in the army reserves (R-2, R-3).

In 1953, Mr. Kaminsky and his partner, Norman Cohen, opened a women's apparel shop in Trenton, New Jersey, and in 1956, they moved their business to Atlantic City. Mr. Cohen remained Mr. Kaminsky's business partner until 1961. Mr. Kaminsky continued the business and his dress store was open for approximately twenty-eight years on Atlantic Avenue in Atlantic City. For three years, starting in 1974, Mr. Kaminsky served as president of the Atlantic City Merchants Association (R-4), and he took an active role in the campaign to bring casino gambling into Atlantic City.

In 1957, Mr. Kaminsky married his wife and they have raised and provided college educations for their three children.

During the summer of 1983, the Sands' general counsel, Esther Sylvester, a customer of Francine, suggested to Mr. Kaminsky that he move his retail store into the proposed food court. After approximately six months of negotiations, on January 30, 1984, Francine and Greate Bay entered into a ten-year lease, with Francine receiving an option to renew the lease for an additional five-year period (R-1, Section 3). Pursuant to this lease, Francine is to operate a high-quality retail clothing boutique on the fourth floor of the food court and is to pay an annual rent of $34,000 and 7% of its annual gross sales above $400,000 (R-1, Section 4). The lease provides that the Sands can audit Francine's books and, in fact, an audit of Francine's records for the period from September 1, 1984, through December 31, 1985, took place in January 1986 (R-10), and an audit of Francine's books for the period from September 1, 1986, through August 31, 1987, took place in October 1987 (R-20).

As originally written, the lease provided that Francine was to open on or before April 15, 1984 (R-1, Section 3). In order to open the store in the Sands, Mr. and Mrs. Kaminsky had to make a capital investment of about $300,000, which required them to place a mortgage on their personal residence. After their store in the Sands had been open for approximately one year, Mr. and Mrs. Kaminsky closed their store on Atlantic Avenue and the store in the Sands is now their principal source of revenue.

Since Mr. Kaminsky was concerned about the remoteness of the store's location, there is a provision in the lease which requires the Sands to make reasonable efforts to advertise and promote Francine and which specifically requires the placement of notices and displays at various locations within the hotel (R-1, Section 7.04). In addition, the appendix to the lease provides for an abatement of the rent until the completion of two escalators connecting the lobby with the food court area and the opening of the restaurant on the fourth floor (R-1, Appendix I). During the lease negotiations, it was represented to Mr. Kaminsky that besides his store, there would be a restaurant, a gift shop, and a lounge for bus patrons on the fourth floor.

During the hearing, there was extensive testimony by both Mr. and Mrs. Kaminsky regarding the difficulties they have had with the Sands as a landlord. Their problems started with the fact that there was a delay in the food court construction and Francine did not open until September 11, 1984, which resulted in the loss of the summer-season business.

In addition to this delay, the cost of the construction of the food court had apparently been underestimated. In April 1984, Mr. Kaminsky was asked to pay an additional $60,000 towards the construction of the heating and water systems for the store. Bradley Stone, the President of the Sands, stated that initially Mr. Kaminsky orally agreed to pay this additional amount but that there was an error in the construction letter (R-1), and later Mr. Kaminsky refused to honor his commitment.

Mr. Kaminsky disagreed and testified that he engaged in negotiations with the Sands regarding an additional construction payment; however, he declined to pay any amount when the Sands would not give additional concessions to Francine (R-6). When Mr. Stone found out that Mr. Kaminsky had refused to pay the additional $60,000, he said something to the effect that Mr. Kaminsky would have to live with him as a landlord. Mr. Stone admitted he was annoyed at Mr. Kaminsky for reneging on what he considered to be an agreement but denied that the comment was intended to be a threat.

After Francine opened in the Sands, Mr. Kaminsky was upset when access to the hotel's elevators was limited to hotel guests (R-7), and when the Sands failed to use the fourth-floor lounge for its bus patrons. He stated that these actions limited the number of people who went to the fourth floor, which affects Francine's business.

The Kaminskys are also upset by the amount of advertisement given to Francine by the Sands (R-5, P-2 through P-13), and they feel that the Sands has not provided sufficient information about Francine to its customers. Additionally, the Kaminskys were upset when the Sands removed Francine's three custom-built display cases from the hotel. In 1985, the Sands approved the design for these display cases (R-8), and it cost Francine approximately $875 to construct each one of them. The Sands allowed Francine to place these cases at specific locations in the public areas within the hotel. After the display cases were installed, Francine hired a professional window-display company to change the displays in the cases on a monthly basis. Mr. Kaminsky stated that he was told in mid-July 1987 that the display cases in the lobby and third floor had to be removed because of construction work on those floors (R-15). Mr. Kaminsky represented that the construction work did not start until more than a year after the display cases had been removed. Later, without any notice, the Sands removed the display case from the second floor and placed it in an unsecured area on the fourth floor of the garage, where it was vandalized and where the display items were stolen (R-14, R-16). Francine's claim for damages has been rejected by the Sands and the Sands has not agreed

to Mr. Kaminksy's request to relocate the cases in other parts of the hotel (R-16, R-17, R-18).

Mr. Stone stated that both parties agreed that the case in the lobby would be removed when the lobby was remodeled and that he had the display case on the second floor removed since he never agreed to have it on that floor. As to the case on the third floor, Mr. Stone stated that it was removed since it had not been attractively maintained by Francine and had been vandalized.

In addition to the display cases, the Kaminskys stated that the Sands agreed to allow them to have certain posters (R-27) in the public areas advertising Francine, and that the Sands had not lived up to its commitment regarding these posters. Mr. Stone disagreed and stated that the posters were permitted by the Sands and in fact were allowed to be located in areas where the Sands normally did not allow any advertisement.

The other area of disagreement between the Sands and Francine relates to the Sands' Red Carpet Program, which will be discussed hereafter.

C - CARNEGIE DELICATESSEN, INC.

Carnegie operates a well-known restaurant in New York City, and it was one of the famous regional restaurants approached by the Sands' consultant regarding operating an outlet in the food court.

On March 2, 1984, Carnegie signed a lease with Greate Bay for a period of ten years, with an option on the part of Carnegie to extend the lease for an additional five-year period (P-1, section 3). The Sands lent money to Carnegie to help pay for its construction costs (D-2).

Pursuant to the lease agreement, the rent to be paid by Carnegie is based on its gross receipts and, for the period of time in issue in this matter, the rent was 13% of Carnegie's gross sales, less a two and one-half percent deduction for breakage, spoilage, bad debts and the like (P-1, section 4.02). Like Francine, Carnegie is subject to audits by the Sands (D-19, D-20).

In addition, the lease provides that "gross sales" for the purpose of the rent shall not include food and beverages paid for with vouchers, certificates, tickets, etc., which are issued by the Sands to patrons as part of the promotional programs operated by the casino (complimentaries) (P-1, section 4.02). As to these sales, the lease provides that the Sands will reimburse Carnegie in an amount equal to 80% of the value of the complimentaries (P-1, Section 4.02c(iii)).

On May 18, 1984, Carnegie opened its restaurant at the Sands and Leon Sverdlen, the president and part-owner of the subsidiary corporation, was responsible for its day-to-day operation.

During the hearing, it was established that Mr. Sverdlen had died on February 7, 1987. However, a number of witnesses testified as to the difficulties Mr. Sverdlen and other representatives of Carnegie had had with the Sands as a landlord.

Carnegie was not happy with the amount of advertisement it received from the Sands, and complained that it was not featured in promotional material distributed by the Sands (D-14) and that it was not mentioned in the Sands' advertisements in New York newspapers. Therefore, Carnegie had to pay for its own newspaper advertisement.

According to the Carnegie witnesses, the room service menu in the hotel rooms did not prominently feature the Carnegie's restaurant (D-15, D-16) and that this was changed only after numerous complaints by Carnegie (D-17, D-18). Also, Carnegie represented that if hotel guests ordered certain items such as corned beef from the room service menu, the items were to be supplied by Carnegie (D-7). This apparently was not done since Carnegie received complaints about sandwiches which it had not prepared.

By the lease, Carnegie was given an exclusive right to sell certain items, including lox (smoked fish) (P-1 section 7.02, D-6). There was a dispute about lox since the Sands wanted to serve it as part of its Sunday brunch in one of its restaurants (D-13). Carnegie agreed to allow the Sands to serve lox for a short period (D-5); however, the Sands has continued to serve this item notwithstanding the lease provision (D-9, D-10, D-11).

In 1986, the Sands took the position that its complimentaries were not subject to sales tax (D-4). The State of New Jersey later disagreed with the Sands' position and

demanded tax payments from Carnegie (D-21, D-22, D-24, D-25). Apparently, the Sands agreed to indemnify its vendors, including Carnegie, but then changed its mind when Carnegie allegedly failed to appeal the tax assessment or to give adequate notice to the Sands regarding the right of appeal (D-27).

Carnegie also has an ongoing dispute with the Sands regarding its rent payments. It was represented at the hearing that an employee of the Sands set up Carnegie's accounting books in 1984 and it was not discovered until recently that the two and one-half percent deduction for breakage, etc., was not deducted from the total gross receipts as allowed by the lease and was only deducted from the gross receipts from cash sales. Since about 60% of Carnegie's sales involve complimentaries, Carnegie alleged that it has made substantial overpayments in rent since 1984 (D-22, D-25). This alleged miscalculation of rent was not discovered during the audits conducted by the Sands (D-19, D-20).

As to the Carnegie lease, Mr. Stone testified that he would prefer to have a coffee shop with a varied menu in Carnegie's location and there have been discussions with Carnegie about closing its restaurant or moving to the third floor.

In addition, Mr. Stone testified that there have been complaints regarding the service at Carnegie and that Carnegie's sales are down. Carnegie admitted its sales are down but alleged that this was due to the lack of advertisement by the Sands and the Sands' promotion of its own restaurants in its distribution of complimentaries (D-8, D-12, D-13, D-14, D-30).

D - SANDS' RED CARPET PROGRAM

The Red Carpet Program is a large promotional program initiated by the Sands in January 1985. In order to encourage patrons to play the one-dollar slot machines, a ticket is issued each time a Red Carpet Club player places forty coins in the slot machine (R-26). These tickets are then exchanged for certificates issued in either one-dollar or five-dollar denominations (R-9, R-24). The Red Carpet Program was expanded in 1986 to also include table players.

The name of the patron and an accounting control number appears on each of the certificates. These certificates are valid for a specified period of time, and some of the certificates contain a statement that they are not transferable (R-9).

The certificates can be used in lieu of money to purchase food and merchandise at participating facilities in the Sands. They can also be used to pay hotel bills and for the nightclub shows at the Sands. As of the time of the hearing in this matter, the Sands did not give any specific information to its patrons as to where and when they could use the certificates. For the time period in issue in this matter, these certificates could be used anywhere in the hotel portion of the Sands except for Francine. Also excluded were certain nightclub shows, and hotel rooms and restaurants (owned by the Sands) on certain nights. According to Mr. Stone, it was up to the patron to check as to where and when the certificates could be used. Mr. Stone admitted that some patrons might assume that the certificates could be used everywhere in the Sands, including Francine. Mr. Kaminsky felt that the Sands' advertisement was misleading, since it did not list the participating facilities.

Mr. Kaminsky noted that on February 28, 1987, the Sands had a special program for Red Carpet Club patrons (R-22, R-23). As part of this program, Francine presented a fashion show at the request of the Sands. During this show, the clothes were identified as having come from Francine; however, the patrons were not told that their certificates could not be used there. According to Mr. Kaminsky, some customers were very annoyed when they selected items for purchase and were then told that the store did not accept certificates. This was frustrating to the store since it sometimes lost the sales and also lost the "goodwill" of these customers. Mr. Kaminsky stated that his store did not solicit customers with certificates and that he preferred not to participate in any of the Sands' promotional programs, since it meant that he had to sell at a discount. Mr. Kaminsky stated that he only accepted the certificates in order to avoid having confrontations with the casion patrons. Notwithstanding the above, Mr. Stone denied that the Sands' advertisement regarding the Red Carpet Program was misleading and denied that there was any obligation of the Sands' part to identify who was participating in the program.

The Sands did not enter into any separate agreements with its independent vendors regarding the Red Carpet Program. Apparently, all of the independent vendors, except for Francine, had provisions in their leases regarding participation in the Sands' promotional programs. By the leases, these vendors are paid by the Sands 80% of the face value of the complimentaries when they are turned in for redemption. The one exception is Bookbinders, a food outlet on the third floor, which is paid 100% of the face value of the complimentaries.

Early in 1986, after a number of customers tried to purchase items with certificates, Mr. Kaminsky asked to participate in the program. Mr. Stone agreed to the request; however, he offered to redeem the certificates at 60% of face value since he felt that clothing stores have a higher percentage of profit than food outlets. Mr. Kaminsky disagreed and argued that he could not make a profit if the redemption rate was 60%. Mr. Stone and Mr. Kaminsky could not agree and Francine did not become a participating facility for the Red Carpet Program.

In the fall of 1986, Mr. Sverdlen offered to redeem certificates for Francine after he saw how angry a customer got after being told that the store did not accept certificates. For approximately six months, between November 1986 and May 12, 1987, Francine accepted certificates for the sale of merchandise. Either Mr. Kaminsky or Mrs. Kaminsky gave these certificates to Mr. Sverdlen and, after his death, to Vincent Alegret, and received 80% of the face value of the certificates in cash. According to the Kaminskys, they did not know what Carnegie did with the certificates it received from Francine nor did they have any knowledge regarding the lease agreement between Carnegie and the Sands.

Initially, Francine kept no records regarding the amount of sales for certificates. However, for the last three months that it accepted the certificates, Francine kept a record of the sales. This record was in the form of a ledger sheet labeled the account of "Mr. Loomis" (R-12). At the hearing, Mr. Kaminsky estimated that Francine had made a total of three dozen sales for certificates and he estimated that it received approximately $6200 from Carnegie for the certificates (P-14 at 89-90). According to Mr. Kaminsky, the certificate sales represented about 1% of the store's business for that period of time. Although the Kaminskys admitted that they never formally told the Sands that they were accepting the certificates, they testified that the transactions were conducted openly and that some employees of the Sands were aware of the fact that they were accepting certificates. According to Mr. Kaminsky, on at least one occasion a customer accompanied by a Sands employee came into Francine to purchase items.

Francine stopped accepting certificates when it was informed of the Division's investigation regarding their "participation" in the Red Carpet Program. According to Mr. Kaminsky, Francine still has about $600 worth of certificates, and the store still gets customers who are irate when informed that they cannot purchase items with certificates.

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The Kaminskys testified that neither of them considered their action as to the certificates to be fraud or deception and they thought the Sands benefited by their action since the customers were satisfied and not frustrated by the limits on the use of the certificates.

Mr. Kaminsky admitted that at times he would explain to a customer that he could not sell an item for certificates at the listed sales price because the Sands did not redeem the certificates for their full value and he would add 20% to the purchase price. Apparently, this occurred when the item had been discounted during a sale.

It was also noted that after Francine stopped accepting certificates, on one occasion the Sands authorized it to sell merchandise to Janice Berger for certificates and the Sands paid Francine the full face value of the certificates.

The witnesses for Carnegie confirmed that when Mr. Sverdlen and, later, Mr. Alegret, received the certificates from Francine, they gave Francine 80% of the value of the certificates in cash. These certificates were then given to the cashier at the restaurant. The cashier was instructed to convert the necessary number of cash sales into certificate sales so that all of Francine's certificates were attached to Carnegie receipts, which were then sent to the Sands' financial office for redemption.

Mr. Alegret, the current general manager of Carnegie, stated that he was aware that Mr. Sverdlen was taking Francine's certificates and that he was told by Mr. Sverdlen that he agreed to redeem those certificates as a favor to Mr. Kaminsky (P-15 at 60). After Mr. Sverdlen died, Mr. Alegret continued to accept the certificates. Mr. Alegret testified that he personally gave Francine about $3000 for certificates (P-15 at 3). According to Mr. Alegret, he did not feel that he was doing anything wrong or that this action had any adverse effect on the Sands. In fact, Mr. Alegret felt that the Sands benefited since the Sands only got 13% in rent for cash sales, while for certificate sales the Sands got to keep 20% of the face value of the certificates.

Norman Sverdlen, the son of Leon Sverdlen, who has a 10% interest in Carnegie, testified that he was associated with Carnegie during the time in issue but did not work at the Atlantic City restaurant until after his father's death. Mr. Norman Sverdlen was informed by Mr. Alegret about the arrangement with Francine. He did not think there was anything wrong with redeeming the certificates for Francine; however, he

also stated that he was not familiar with the terms in Carengie's lease regarding the calculations of the rent.

Milton Parker and Fred S. Klein, both of whom have financial interests in Carnegie, testified that they visit the restaurant infrequently and were not aware of the arrangement with Francine until after the investigation. Since Carnegie has paid over one and one-half million dollars in rent (D-3), Mr. Parker felt that even if Carnegie had done something improper, the amount involved is negligible. Mr. Klein agreed with Mr. Parker. Mr. Klein felt that Carnegie did not do anything dishonest and that the Sands informed the Division about this matter since it wanted to get rid of Carnegie so that it could operate its own restaurant at Carnegie's location.

Although Mr. Stone admitted that the Sands realizes a larger profit from the restaurants it owns and that he would prefer a coffee shop at Carnegie's location, he denied that the Sands' action was taken so that it could terminate Carnegie's lease.

Mr. Stone testified that Francine was not authorized to redeem certificates and therefore it was not entitled to get 80% of the face value of these certificates. Further, he noted that if Francine could redeem the certificates, the Sands was willing to pay Francine only 60% of the face value of the certificates. Mr. Stone stated that by the lease with Carnegie, the Sands was entitled to a rental payment on all cash sales and that Carnegie failed to pay rent on those cash sales which it misrepresented as its own certificate sales. Mr. Stone felt that both Francine and Carnegie were improperly getting Sands money. In addition, Mr. Stone noted that not all certificates are used by the patrons and therefore there is no merit to the statement that the Sands would have to pay 80% of the value of all certificates, no matter who submitted them for redemption.

E - INVESTIGATIONS

In March 1987, Dorothy Gallagher, a Sands' patron, purchased items worth approximately $3000 in Francine with certificates. Ms. Gallagher mentioned her purchases to a representative of the Sands who reported the matter to his or her supervisor and, eventually, Mr. Stone was told about the sale. According to Mr. Stone, this was the first time he learned that Francine was accepting certificates. At Mr. Stone's request, the matter was investigated and the financial office of the Sands was able to establish that about $2000 of the certificates allegedly used by Ms. Gallagher in Francine were redeemed by Carnegie.

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Paul Lisny, the current Director of Security for the Sands, was asked to look into the matter. In order to determine whether the Gallagher purchase was an isolated event, Mr. Lisny arranged to have Ann M. Brennan attempt to purchase something in Francine with certificates. Ms. Brennan is the Security Director for Anchor Savings and Loan, and both she and Mr. Lisny are members of the American Society of Industrial Security. Ms. Brennan was given certificates worth $700, and on March 21, 1987, she went into Francine, selected a shawl with sable tails and purchased it with certificates. At the hearing, Ms. Brennan stated that she was not sure of the amount on the price tag on the shawl but that she though it was between $200 and $300. When she went to the cashier with the shawl, Ms. Brennan was informed that a manager would have to approve the sale for certificates. Ms. Brennan stated that Mr. Kaminsky told her that he would accept the certificates but that she would have to pay more than the tag price to make up for the casino's discount. Mr. Kaminsky then calculated what she had to pay and the cashier took $600 in certificates. According to Ms. Brennan, she did not get a receipt for the purchase nor did the cashier ring up the sale on the cash register. Ms. Brennan thought the price she paid was too high; however, she did not question the amount. Ms. Brennan gave the shawl and the remaining $100 in certificates to a person in the Sands' Security Office.

Mr. Kaminsky did not remember Ms. Brennan; however, he stated that Francine had purchased a shawl with sable tails in 1986 (R-25). According to Mr. Kaminsky, the sale price for the shawl was initially $875, and by March 1987 it may have been marked down as a sale item. Since the shawl was on sale at a discounted price, Mr. Kaminsky stated that he probably told Ms. Brennan that if the shawl were purchased with certificates he would have to increase the price to make up for the Sands' discount. Mr. Kaminsky thought the shawl was sold for about $700; however, he was positive that the price for the shawl was not between $200 and $300 dollars, since this would have been less than he paid for the item. Since Ms. Brennan was not sure of the amount on the price tag, I accept Mr. Kaminsky's explanation as to the price charged for the shawl.

Mr. Lisny stated that in order to be sure that the Gallagher and Brennan sales were not isolated incidents, and since all of the certificates given by Ms. Brennan to Francine were traced to Carnegie, the Sands hired the Trace Agency to attempt to purchase items at Francine with certificates. After the Trace agents were also successful in purchasing an item at Francine for certificates, the matter was reported by the Sands to the Division. According to Mr. Stone, the Sands felt it had to report the matter to the

regulatory agency since it involved the improper taking of the Sands' money. Mr. Stone did not contact Francine or Carnegie about the matter since he did not think it was a "dispute" which could be resolved by the cure provision of the leases (R-1, Section 29; P-1, section 29).

After the matter was reported to the Division, undercover agents were sent to Carnegie to see if they could determine what the restaurant had done with the certificates it received from Francine. State Police Detective William DiGiuseppe stated that on April 28, 1987, he and several other undercover agents had lunch at Carnegie and he paid the bill in cash. Detective DiGiuseppe saw the cashier, Helen Jones, ring up the sale and put the money in the cash register; however, she placed the bill on the counter near the cash register. After he left the restaurant, he observed Ms. Jones through the window and saw her get some certificates from under the counter, attach them to the bill he had paid, and then ring up the sale on the cash register for a second time. Detective DiGiuseppe later interviewed Ms. Jones, and she told him that she had been given a number of certificates which she was told came from Francine, and that she was required to attach them to cash sales during her shift. Later, Detective DiGiuseppe was told by the Sands that the certificates attached to his bill were used by a customer in Francine. Mr. Alegret confirmed that this was the procedure used by Carnegie to convert cash sales into certificate sales.

During the hearing, both the Kaminskys and Mr. Alegret stated that their actions were not done secretly and that they had made no attempt to hide their actions. Mr. Kaminsky stated that the ledger sheet used for the certificate sales had the name "Mr. Loomis" on it (R-12) to discourage such sales, since the shop preferred to sell for cash. As a rebuttal witness for the Division, William F. Bognell testified that in April 1987, while employed by the Sands, he went into Francine to pick up the rent payment. He usually went to the store to pick up the rent check; however, he did not go there at a specific time. On that day, Mr. Bognell stated that he saw Carnegie bills on the counter with certificates attached to them and noted that a clerk covered the bills when she observed that he saw them while he was waiting for the rent check to be prepared. Also on that day, Mr. Bognell stated that Miguel Vasquez, a Carnegie day manager, came into Francine while he was there. The store personnel then became nervous and Mrs. Kaminsky quickly told Mr. Vasquez that the package would not be ready until the next day and they went into the back room to talk. Mr. Bognell thought that the incident was suspicious and he reported it to his supervisor.

In response, Mr. Kaminsky stated that the April 1987 rent check was dated April 5, 1987 (R-28), and that Francine's records show that on April 8, 1987, the United Parcel Service picked up a package to be sent to Florida to Mr. Alegret's aunt (R-29). Also, Mr. Kaminsky suggested that Mr. Bognell saw Carnegie bills which were for purchases at Carnegie made by him or his wife. According to Mr. Kaminsky, he has a credit account with Carnegie and periodically pays for the purchases with a check.

F - CHARACTER WITNESSES

On behalf of Francine, five people testified as to the good character, honesty and integrity of the Kaminskys as well as the good reputation of their business, Francine. These witnesses are: Assemblywoman Dolores G. Cooper (R-21); Norman N. Cohen, a retail businessman; Irvin Snyder (R-21); Cantor Edmond A. Kulp of Beth Judah congregation in Ventnor (R-21); and John R. Siracusa, Jr., a real estate and insurance executive (R-21). Except for Mr. Cohen, who is Mr. Kaminsky's brother-in-law, all of the witnesses have known the Kaminskys for many years through business, civil and social activities. All of these witnesses were surprised about the allegation of fraudulent activities, and none of them thought there was any real merit to the allegation. They felt that the allegation had not adversely affected the Kaminskys' or their company's good reputation in the community.

In addition to these witnesses, several people submitted letters attesting to the Kaminskys' good character and excellent reputation in the community; specifically, Emanuel Solomon, Chairman of the Board of Anchor Savings and Loan Association; Robert Rothenberg, former co-owner of the Hertz Rent-A-Car in Atlantic City; Martin P. Bennett, General Manager of the Quality Inn in Atlantic City; Joseph C. Mangano, a retired Atlantic City businessman; Murray Raphel, an advertising consultant; John H. Rosenberg, an attorney; and Richard L. Okonow, a former president of the Atlantic City Hotel/Motel Association (R-21).

On behalf of Carnegie, Irwin Halper, the vice-president of Halper Brothers Papers, which has supplied paper products to both the New York City and Atlantic City restaurants, and Jacob Smith, who has supplied the restaurants with bakery items, testified as to the excellent integrity of Carnegie and its owners and employees, and they stated that the allegation against Carnegie had not changed their opinions regarding the integrity of the business. In addition, John D. O'Brian, a syndicated newspaper writer,

stated that he has been a customer of the New York restaurant for ten years and that the Carnegie organization was operated with good business integrity.

In addition, Carnegie submitted eight letters which attested to the good character, honesty and integrity of Vincent Alegret. These letters were from Russell S. Lupo; Jack Abbate, president of Regency Service Carts, Inc.; Harris Flax, president of Sunshine Foods; Steven Slakoff, Five Cedar Farms; Tony Pilla, account representative of Marstan Industries, Inc.; Richard A. Hammel, chain account executive for DuBois Chemicals; and Reverend Ronald S. Falotico, pastor of the Church of the Holy Spirit (D-26). Also, Carnegie presented a letter from Michael Freidman, vice-president of Amalgamated Bank of New York, attesting to the good character of Mr. Parker (D-29), and a letter from Harold R. Field, president of Field's Baking Corporation and Pechter Baking Company, attesting to the good character of both Mr. Parker and Leo Steiner. Lastly, Carnegie submitted letters, newspaper articles and photographs attesting to the good character and civic activities of Mr. Steiner, who was a principal owner of the Carnegie Restaurant in New York City prior to his death at the end of 1987 (D-31).

III - CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 5:12-92d, a casino service industry license may be denied or revoked if the applicant or license holder is disqualified pursuant to N.J.S.A. 5:12-86. It has been recognized that the denial or revocation of the license is discretionary and that a lesser penalty may be imposed. Edward Bershad t/a Penn Vending Co. v. Division of Gaming Enforcement, OAL DKT. CCC 8178-87 (Sept. 29, 1988), reversed Commission (February 2, 1989).

By statute, there is an automatic disqualification if a person or corporation is convicted of any of the crimes listed in N.J.S.A. 5:12-86c(1). However, even if there is no conviction, a disqualification can be established pursuant to N.J.S.A. 5:12-86g if the Division can show by a preponderance of the evidence that the person or corporation committed any of the offenses set forth in N.J.S.A. 5:12-86c(1).

In this matter, it is the Division's position that the conduct of both respondents regarding the certificates constitutes theft by deception, a violation of N.J.S.A. 2C:20-4. This statute provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

In order for this offense to be a statutory disqualification pursuant to N.J.S.A. 5:12-86c, the amount of money or property involved must exceed $500 (crime of the third degree).

Deputy Attorney General Frederick J. McDonough agrued that the Division has shown that both respondents are guilty of theft by deception, since it has established that:

(1) Both respondents obtained money from the Sands by intentionally creating the false impression that all of the certificates submitted to the Sands by Carnegie for redemption were accepted by Carnegie for food sales, and that neither respondent attempted to correct this false impression.

(2) The amount of money exceeds $500. Based on several perceptions, the amount of money involved includes:

a. Approximately $6,200 - the amount paid by the Sands for certificates, with a face value of $7750, that Francine "funneled" through Carnegie.

b. Approximately $1550 - Francine received reimbursement "indirectly" from the Sands at the rate of 80% (80% of $7750

equals $6200) rather than at the 60% rate offered to it by the Sands (60% of $7750 equals $4650).

c. Approximately $786.16 - the underpayment of rent by Carnegie (Mr. McDonough arrived at this amount by multiplying the $6200 that Francine received from Carnegie by the net rent percentage of 12.68%. Carnegie's rent for the period in issue was 13% of its gross sales. Since Carnegie was allowed a deduction of 2 1/2% for breakage, etc., the rent payment was 13% of 97.5% of its gross sales, which equals a net rent percentage of 12.675%, rounded off to 12.68%).

Regarding the rent payment, Mr. McDonough rejected the argument of Mr. Alegret that the Sands benefited by the Francine-Carnegie arrangement. Mr. McDonough argued that Mr. Alegret's conclusion that the Sands benefited by Carnegie's action is incorrect. Mr. McDonough stated:

> A moment's thought demonstrates the illogic of Carnegie's argument. Each time that Carnegie falsely represented a $10 cash sale (on which rent was payable) as a Red Carpet sale (on which rent was not payable), the following happened: 1) The Sands took $8 out of its pocket and gave it to Carnegie, which passed it on to Francine; 2) Carnegie retained $2 for itself; and 3) the Sands received no rent. Thus, the Sands was out $8 that it should not have had to pay and the Sands did not receive the $1.30 rent payment that it should have received. [Brief at 13].

In addition, the Division argued that both respondents engaged in a conspiracy to commit the theft by deception, a violation of N.J.S.A. 2C:5-2. Subsection "a" of this statute provides:

> A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

Pursuant to N.J.S.A. 5:12-86c(1), conspiracy is a statutory disqualification.

Mr. McDonough argued that both respondents are guilty of conspiracy since they mutually agreed to the false representation to the Sands that Carnegie had received the certificates from its customers, and he cited State v. Yormark, 117 N.J. Super. 315 (App. Div. 1971), vacated in part on other grounds, 61 N.J. 202 (1972); Asbury Park Bd. of Ed. v. Hoek, 66 N.J. Super. 231 (App. Div. 1961), reversed on other grounds, 38 N.J. 213 (1962).

Further, Mr. McDonough argued that the disputes that both Francine and Carnegie have with the Sands are immaterial to the issue of whether or not they are guilty of any criminal actions. He argued that the doctrine of "unclean hands" is not relevant in this matter and that the respondents cannot be found to be "less culpable" because of alleged improper conduct by the Sands. Also, Mr. McDonough argued that it is not relevant that the Sands has an obligation to redeem certificates given to its patrons or that Francine may have retained the goodwill of the casino patrons by accepting the certificates.

Lastly, Mr. McDonough argued that the respondents' actions reflect adversely upon their respective good character, honesty and integrity. In order to obtain or hold a casino service industry license, it is necessary for the applicant or holder to establish by clear and convincing evidence its good character, honesty and integrity, N.J.S.A. 5:12-92c; N.J.A.C. 19:43-1.3(b)2 and N.J.A.C. 19:43-1.3(c).

Mr. Fusco, on behalf of Francine, argued that the Division has not shown by a preponderance of evidence that Francine committed the offense of theft by deception. Mr. Fusco argued that:

(1) Francine never purposely deceived the Sands regarding its acceptance of certificates, and the facts do not establish that there was either a criminal purpose or a conscious objective to deceive. All of Francine's activities with the certificates were openly conducted and it paid taxes and rent on the monies received.

(2) Francine did not improperly profit from its acceptance of the certificates. Francine would have preferred to sell for cash since its acceptance of certificates meant that it received discounted payments for its merchandise.

(3) Francine had no contact with the Sands as to the certificates and received no money from the Sands.

(4) Francine accepted the certificates to maintain the goodwill of the customer who had been misled by the Sands regarding the use of the certificates. These customers got an equivalent amount of Francine's merchandise for the certificates.

Also, Mr. Fusco argued that Francine did not engage in a conspiracy. He stressed that neither Mr. nor Mrs. Kaminsky was aware of the terms of the Sands-Carnegie lease regarding the redemption of certificates or the calculation of the rent, and that they did not know the procedure used by Mr. Sverdlen and Mr. Alegret to redeem the certificates given to them by Francine.

Further, Mr. Fusco argued that Francine's involvement with the certificates is no more than a commercial dispute between the company and the Sands which should be resolved by civil litigation. Additionally, Mr. Fusco argued that the Sands' misleading information to its patrons regarding the identity of the participating outlets is a deceptive business practice, which is a criminal offense pursuant to N.J.S.A. 2C:21-7a.

Mr. Pearson, on behalf of Carnegie, argued that the Division has not shown by a preponderance of evidence that Carnegie committed the offenses of theft by deception and/or conspiracy.

Mr. Pearson noted that the Sands has no rules and regulations regarding the use or redemption of the certificates. Mr. Pearson argued that Carnegie accepted Francine's certificates as a favor to its neighbor and had no criminal purpose or conscious intent to deceive. He argued that this matter at worse represents poor judgment on the part of Carnegie.

Additionally, Mr. Pearson disputed the Division's argument that Carnegie improperly underpaid about $786 in rent as a result of its redemption of Francine's certificates. Mr. Pearson noted that on cash sales Carnegie has to pay a net rent percentage of 12.675%. In comparison, for a certificate sale, Carnegie gets only 80% of the sale and is effectively paying 20% to the Sands. Since the Sands gained more on certificate sales than on cash sales, Mr. Pearson argued that the Sands suffered no monetary loss in this matter. Secondly, Mr. Pearson argued that even if Carnegie underpaid about $786 in rent as argued by the Division, the net loss to the Sands was realy $352, since Francine paid $434 in rent on the money it received from Carnegie for its certificates. Further, Mr. Pearson argued that if Carnegie improperly withheld some rent, it is a matter to be settled in a civil court as a lease violation.

Both Mr. Fusco and Mr. Pearson argued that once the Sands gave certificates to its patrons, it undertook an obligation to redeem them. Therefore, if Francine did not accept the certificates, the patrons would have used them elsewhere. Since the Sands would still have redeemed the certificates, both attorneys argued that the Sands did not lose anything from the Francine-Carnegie arrangement. Further, both Mr. Fusco and Mr. Pearson argued that the Sands had brought this matter to the attention of the Division in order to further its attempts to terminate the leases with both respondents.

In addition, both Mr. Fusco and Mr. Pearson argued that, since the Division had not shown any criminal activities by either of the respondents, it was not necessary for either respondent to establish its good character, honesty and integrity.

At the hearing and in his briefs, Mr. Fusco argued, in the alternative, that Francine had submitted sufficient testimony and exhibits at the hearing to establish by clear and convincing evidence the good character, honesty and integrity of both the Kaminskys and their business, Francine.

Also at the hearing, Mr. Pearson presented witnesses and exhibits to establish by clear and convincing evidence the good character, honesty and integrity of Carnegie.

Having reviewed the facts and the arguments of the parties, I agree with Mr. McDonough, and I **CONCLUDE** that the Division has established that both respondents engaged in conduct which constitutes theft by deception and conspiracy.

I **CONCLUDE** that Francine accepted certificates because it did not want to lose the sales and that it intentionally arranged to have Carnegie redeem its certificates since it wanted to receive an 80% rather than a 60% return. As pointed out by Mr. McDonough, Francine could have avoided having confrontations with customers about certificates by simply posting a sign to inform its customers that it did not participate in the Red Carpet Program. Although the certificate transactions were openly conducted, it is clear that Francine did not want Mr. Stone or the other top management officials of the Sands to be aware of its actions, since they would have taken steps to foreclose the Francine-Carnegie arrangement and deprive Francine of future sales for certificates with an 80% return.

Carnegie was aware that Francine could not directly redeem its certificates with the Sands and it offered to obtain an 80% redemption by representing that it had obtained the certificates from the sale of food items at Carnegie. After accepting these certificates, Carnegie could have created fictional food sales for the amount of the certificates it had received from Francine. However, by converting some of its cash sales into certificate sales in order to redeem Francine's certificates, I **CONCLUDE** that Carnegie intentionally obtained a reduction in its rent payments. In reaching this conclusion, I am rejecting the argument of Mr. Pearson based on Mr. Alegret's testimony that the Sands suffered no monetary loss. Although I recognize that the Sands did better financially with certificate sales, the lease clearly provides that for each sale either Carnegie has to make a rent payment or it receives 80% of the cash value of the sale upon the redemption of the complimentaries, which includes the certificates. By using Francine's certificates to convert certain of its cash sales into certificate sales, Carnegie did neither: it avoided having to pay rent on these cash sales and it also got to keep the full amount of the sale rather than the 80% it was entitled to receive for certificate sales (for these converted sales, Carnegie initially kept 20% of the cash and gave 80% of the cash to Francine; however, it later received the 80% in cash from the Sands).

As to the amount of the rent not paid to the Sands, I disagree with Mr. McDonough's calculations. Mr. McDonough based his calculation on $6200, the amount of money paid by the Sands to redeem the certificates originally accepted by Francine. Based on the lease, I **CONCLUDE** that the rent is to be calculated on $7750, the amount of the cash sales which were converted into certificate sales to redeem Francine's certificates. Therefore, I **CONCLUDE** that the amount of the rent not paid by Carnegie is $982.31 ($7750 times the net rent percentage of 12.675%).

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In addition, I disagree with Mr. Pearson's argument that Carnegie is entitled to a credit against the $982.31 for the amount of money that Francine paid in rent on the items purchased in its store with the certificates. Carnegie could arguably be entitled to such a credit if only "single" sales were involved. However, the facts clearly establish that Francine sold items for certificates and that Carnegie used those certificates to misrepresent certain of its cash sales as certificate sales. Both Francine and Carnegie had to pay rent on their cash sales, so Carnegie is not entitled to credit for Francine's rent payment. In fact, an argument could be made that by the terms of the lease, Francine should have paid rent on $7750, the total sale price, rather than on $6200, the amount it received in cash as a result of the redemption of the certificates.

In this matter, the Division has clearly established the statutory elements of theft by deception. The Division has shown that Francine and Carnegie each received more than $500 from the Sands by deception. The Sands, by redeeming the certificates initially obtained by Francine, relied on the misrepresentation by Carnegie that all the certificates it submitted for redemption were obtained by the sale of food items (all of the certificates were attached to Carnegie bills), and relied on Carnegie's misrepresentation that certain sales were for certificates and therefore exempt from rent. It is also clear that both respondents intentionally created the misrepresentation and that neither Carnegie nor Francine took any action to correct this misrepresentation.

In this matter, I recognize that the Division has not established mens rea, or criminal intent. However, I **CONCLUDE** that this is not a required element of the crime of theft by deception as defined by law. State v. Moore, 158 N.J. Super. 68 (App. Div. 1978), State v. Graves, 60 N.J. 441 (1972). In the Moore case, the court stated:

> Within reasonable limits the Legislature may define a crime without regard to the state of mind accompanying the act of the transgressor, so that the mere doing of an act is a cime "even in the absence of the mens rea which was a necessary prerequisite at common law." Morss v. Forbes, 24 N.J. 341, 358 (1957); State v. Quatro, supra, 31 N.J. Super, at 55-56. What the court said in Morss v. Forbes, supra, is relevant here:
>
> * * * We should not, however, confuse intent with motive. Proof of motive is never essential to a conviction but may be evidential. * * *
>
> The ordained inquiry is whether the act condemned was committed with full knowledge of the facts, in a conscious and purposeful manner, without legal justification or excuse. It must

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> not be the product of inadvertence or negligence or any state of mind other than a free and untrammeled will. This is the definition of criminal intent embodied in the words "willfully and maliciously," as used in this statute. The accused must intend to act in the way proscribed by the statute, but it is immaterial that he does not know or believe his conduct violates the law.
>
> Even positive belief that the act is lawful should not exempt the doer from criminal responsibility. Consciousness of unlawfulness is not essential * * *. If ignorance were a good defense, the administration of the penal law would again depend upon the well-nigh impossible ascertainment of hazy and amorphous mental conditions and opaque logic. [24 N.J. at 359] [Moore at 87-88]

Further, I **CONCLUDE** that the respondents conspired with each other and mutually agreed to the false representation to the Sands in order to redeem the certificates obtained by Francine. However, I **CONCLUDE** that the Division has not shown any conspiracy on the part of Francine as to the misrepresentation regarding the rent payments. The facts presented clearly established that neither Mr. nor Mrs. Kaminsky was familiar with the terms of Carnegie's lease with the Sands, and so they were not aware of the rent benefits to Carnegie by the misrepresentation.

Also, I agree with Mr. McDonough's argument that the disputes between the respondents and the Sands—as well as the possible goodwill advantage to the Sands of having Francine accept certificates—are not relevant to the issue of whether the respondents engaged in illegal business practices.

Therefore, I **CONCLUDE** that the Division has shown a statutory disqualification as to both respondents pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, namely, the unprosecuted violations of N.J.S.A. 2C:20-4, theft by deception, and N.J.S.A. 2C:5-2, conspiracy. In addition, I agree with Mr. McDonough's argument that the respondents' actions reflect adversely upon their respective good character, honesty and integrity. However, based on the facts, I **CONCLUDE** that notwithstanding the respondents' actions regarding about $7750 in certificates, the respondents have both established their good character, honesty and integrity by clear and convincing evidence.

As stated by Mr. Fusco, the transactions in issue occurred about two years ago and the net gains to the respondents were de minimis. Except for the matter before me, there is no allegation of any other improper conduct by either of the respondents. Both respondents have been in business for substantial periods of time and have established

good reputations in the business community. Further, as argued by Mr. Fusco, the actions of the respondents in this matter have had no effect on the gaming operation or the public. The customers of both Carnegie and Francine received fair value in exchange for the cash on certificates paid by them. The established theft by deception relates exclusively to the respondents' dealings with the Sands. In addition, although I have found that the actions of the respondents constitute criminal offenses, I recognize that this type of illegal business practice is normally handled by the civil courts rather than by the criminal courts, and that civil actions have been initiated by the Sands.

As stated, Mr. McDonough noted in his breif that the Commission has recently recognized that even though a disqualification is established pursuant to N.J.S.A. 5:12-86c, it has the discretion to impose a penalty rather than revoke or deny a license to a casino service industry which is not directly related to casino or gambling activities. See, Bershad. During its discussion regarding the Bershad case, the Commission decided that the standards established in the rehabilitation statutes, N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d should be used as a guide to decide how to exercise its discretion in cases similar to this matter involving discretionary license determinations pursuant to N.J.S.A. 5:12-92d.

Considering all the facts in this matter, I **CONCLUDE** that the respondents have overcome the disqualification pursuant to N.J.S.A. 5:12-86 by affirmatively demonstrating their rehabilitation pursuant to the standards set forth in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-92d. Both respondents are well-established businesses with unblemished records, and it is unlikely that they will repeat any type of unlawful business conduct in the future. Also, for the purpose of rehabilitation, I recognize that there were mitigating circumstances, such as the various disputes between the respondents and the Sands.

IV - DISPOSITION

As to the penalty to be imposed in this matter, Mr. McDonough recommends that:

1. The license of the respondents not be revoked;

2. Both of the respondents be required to pay a fine of $10,000 each;

3. Restitution be made by Francine to the Sands in the amount of $6200; and

4. Restitution be made by Carnegie to the Sands in the amount of $786.

Mr. McDonough recognized that mitigating circumstances existed in this matter and stated that the revocation of the respondents' licenses would be a "Draconian punishment." Also, Mr. McDonough stated that both the criminal and the civil courts have recognized that the penalty should be molded in light of the gravity of the misconduct. In support of his position, Mr. McDonough cited the following cases: State v. Hodge, 95 N.J. 369 (1984) (severity of the crime is the single most important factor in the sentencing process); State v. Morgan, 196 N.J. Super. 1 (App. Div. 1984) (sentence for a crime must reflect primarily the severity of that crime); Fischer v. Johns-Manville Corp., et al., 103 N.J. 643 (1986) (punitive damages, where appropriate, should bear reasonable relationship to actual injury and must be considered in light of other factors in the case); and Nappe v. Anschelewitz, et al., 97 N.J. 37 (1984) (in assessing punitive damages, the court must consider all circumstances, including mitigating factors).

Mr. Fusco argued that Francine has established its good character, honesty and integrity and its rehabilitation pursuant to the standards in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d, and therefore no penalty should be imposed on Francine by the Commission. In addition, Mr. Fusco argued that the matter of relief to the Sands should not be decided in this matter since it will be decided in the cases now pending in the Superior Court.

Mr. Pearson agreed with Mr. Fusco, and argued that based on the facts, a penalty of $10,000 is excessive and disproportionately harsh. In addition, Mr. Pearson argued that it is appropriate for the Superior Court to decide whether or not the Sands was entitled to any restitution or damages, since the Sands is not a party in this matter, and since approximate amounts of money were used in this case and there was no attempt to establish the exact amount of money involved.

I agree with Mr. McDonough's recommendation that the respondents' licenses should not be revoked and that both respondents should be required to pay a penalty of $10,000. Even though I have found that the respondents have shown rehabilitation and their respective good character, honesty and integrity, the fact remains that they both engaged in unlawful business conduct. It has been clearly established that all entities

within the scope of the regulatory powers of the Commission are required to conform to the highest standards of business conduct and are subject to stringent screening in order to preserve the public's confidence in the casino industry.

Also for this reason, I **CONCLUDE** that letters of reprimand should be placed in the Division's files on both respondents. These letters of reprimand are to serve as a warning that any illegal business conduct cannot be tolerated and that the repeat of any type of unlawful business practice by either of the respondents in the future will result in license revocation.

As to Mr. McDonough's recommendation that both respondents be required to make restitution to the Sands, I agree with the arguments of the respondents. The matter of restitution by the respondents to the Sands should be determined by the Superior Court since, in this case, there was no attempt to specifically determine the exact amount of monies involved in the Francine-Carnegie arrangement. Further, since the Sands was not a party in the matter, it did not have the opportunity to present witnesses or to cross-examine the respondents' witnesses regarding the amount of money involved in the Francine-Carnegie arrangement.

In conclusion, I **ORDER** that:

1. Francine pay a fine of $10,000;

2. Carnegie pay a fine of $10,000;

3. A letter of reprimand be placed in the Division's file regarding Francine; and

4. A letter of reprimand be placed in the Division's file regarding Carnegie.

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

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

July 7, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 11 1989
DATE

Jacqueline LaVecchia/K.
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner, Division of Gaming Enforcement:

P-1 Lease between Greate Bay Hotel and Casino Inc. and Carnegie Delicatessen, Inc., dated March 2, 1984

P-2 Photograph of certain signs in one of the elevators of the Sands Hotel/Casino and Country Club taken in December 1988 by an employee of the casino

P-3 Photograph of a certain sign on the fourth floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-4 Photograph of a certain sign on the third floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-5 Photograph of certain signs on the third floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-6 Photograph of a certain sign on the third floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-7 Photograph of a certain sign on the third floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-8 Photograph of a certain sign on the second floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-9 Photograph of certain signs on the second floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-10 Photograph of certain signs on the second floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-11 Photograph of a certain sign on the first floor of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-12 Photograph of a certain sign in the lobby of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-13 Photograph of certain signs in one of the elevators of the Sands Hotel/Casino and Country Club, taken in December 1988 by an employee of the casino

P-14 The transcript of the sworn interviews of Myron Kaminsky and Suzanne Kaminsky, taken on September 17, 1987

P-15 The transcript of the sworn interview of Vincent Alegret, taken on July 10, 1987

P-16 The transcript of the sworn interview of Vincent Alegret, taken on August 11, 1987

P-17 Marked for identification only

For the Respondent, Francine, Inc.:

R-1 Lease between Greate Bay Hotel and Casino, Inc. and Francine, Inc., dated January 30, 1984, and attachments

R-2 Honorable Discharge from the United States Army of Myron Kaminsky, dated January 15, 1957

R-3 Report of separation from the Armed Forces of the United States of Myron Kaminsky

R-4 Plaque given to Myron Kaminsky recognizing his services as president of the Atlantic City Merchants Association

R-5 Brochure issued by the Sands Hotel/Casino and Country Club regarding its food court outlets

R-6 Letter from Lloyd P. Eisen to Roberto Rivera-Soto, dated May 8, 1984

R-7 Elevator access card issued to hotel guests by the Sands Hotel/Casino and Country Club

R-8 Display box design prepared for Francine, Inc.

R-9 Red Carpet certificates in the $1 and $5 denominations issued by Sands Hotel/Casino and Country Club

R-10 Letter from William F. Bagnell to Myron Kaminsky, dated January 20, 1986, with attachments

R-11 A copy of N.J.S.A. 2C:21-7

R-12 Ledger Card No. 133 of Francine, Inc.

R-13 Brochure relating to the Bonus Bucks Program issued by the Sands Hotel/Casino and Country Club

R-14 Photographs of the two display boxes of Francine, Inc. after they were placed in the fourth-floor garage area of the Sands Hotel/Casino and Country Club

R-15 Letter from Myron Kaminsky to Brad (Lloyd P. Eisen), dated July 15, 1987

R-16 Letter from Lloyd P. Eisen to Greate Bay Hotel and Casino, Inc., dated July 29, 1987

R-17 Letter from Roberto Rivera-Soto to Lloyd P. Eisen, dated August 10, 1987

R-18 Letter from Roberto Rivera-Soto to Myron Kaminsky, dated June 14, 1988

R-19 Letter from Joseph A. Fusco to Deputy Attorney General Frederick J. McDonough, dated August 26, 1987

R-20 Letter from Kenneth W. Bateman to Myron Kaminsky, dated October 14, 1987, with attachments

R-21 Letters from Assemblywoman Dolores G. Cooper, dated November 30, 1988; Cantor Edmond A. Kulp, dated November 21, 1988; Emanuel Solomon, Chairman of the Board of Anchor Savings and Loan Association, dated November 15, 1988; Irvin Snyder, dated November 21, 1988; John R. Siracusa, Jr., dated November 28, 1988; Robert Rothenberg, dated November 28, 1988; Martin P. Bennett, general manager of Quality Inn in Atlantic City, dated November 21, 1988; Joseph C. Mangano; Murray Raphel, dated November 15, 1988; John H. Rosenberger, dated November 28, 1988; and Richard L. Okonow, dated December 3, 1988

R-22 Invitation to the Red Carpet Club Members from the Sands Hotel/Casino and Country Club to attend a miniature golf tournament and a fashion show (fashions by Francine, Inc.), and cocktail party at the Copa Room. Excerpts from the "Sands Daily," summer 1987 edition, regarding the fashion show

R-23 Photographs and part of the article regarding the fashion show presented by Francine, Inc. as it appeared in Sands Daily

R-24 Red Carpet $1 certificate issued to B. Fisher; $5 Red Carpet certificate issued to Clair Arbuckle; and $5 certificate issued to J. Aidala

R-25 Invoice from Adrienne Landau Designs, Inc., with attachment

R-26 Copy of a Red Carpet Slots ticket

R-27 Billboard advertisement for Francine, Inc.

R-28 Copy of a check issued by Myron Kaminsky to Greate Bay Hotel and Casino in the amount of $2,833.33, dated April 5, 1987

R-29 Copy of United Parcel Services pickup record, dated April 8, 1987

For the Respondent, Carnegie Delicatessen, Inc.:

D-1 Marked for Identification Only

D-2 Promissory Note between Carnegie Delicatessen, Inc. and Greate Bay Hotel and Casino, Inc., dated May 16, 1984

D-3 Total rent payments for the years 1984-87 and the rent payment for January-November 1988

D-4 Letter from Lee C. Johnson to Leon Sverdlen, dated April 15, 1986

D-5 Letter from Noah Bronkesh to Roberto Rivera-Soto, dated June 5, 1985, with attachments

D-6 Authorized food and beverages for various outlets in the food court at the Sands Hotel/Casino and Country Club

D-7 Letter of understanding signed by Greate Bay Hotel and Casino, Inc., and Carnegie Delicatessen, Inc., dated March 2, 1984

D-8 Memorandum from Arnold Orenstein, dated October 9, 1985

D-9 Letter from Noah Bronkesh to Roberto Rivera-Soto, dated October 11, 1985

D-10 Letter from Roberto Rivera-Soto to Noah Bronkesh, dated October 11, 1985

D-11 Letter from Noah Bronkesh to Roberto Rivera-Soto, dated October 15, 1985

D-12 Letter from Noah Bronkesh to Roberto Rivera-Soto, dated November 15, 1985

D-13 Announcement made by Sands Hotel/Casino and Country Club regarding Brunch at the Brighton Steakhouse

D-14 A $5 bonus card, a $10 dine around coupon booklet and a travel agent week coupon issued by the Sands Hotel/Casino and Country Club

D-15 A room service menu for the Sands Hotel/Casino and Country Club

D-16 A room service menu for the Sands Hotel/Casino and Country Club

D-17 A room service menu for the Sands Hotel/Casino and Country Club

D-18 Letter from Leon Sverdlen to Gary Saunders, dated December 11, 1985

D-19 Memorandum from John R. Osborne to Lee C. Johnson, dated February 27, 1986, with attachments

D-20 Letter from Kenneth W. Bateman to Vincent Alegret, dated August 27, 1987

D-21 Letter from the Division of Taxation, New Jersey Department of Treasury to Carnegie Deli, Inc., with attachment, dated March 2, 1988

D-22 Letter from Ira Friedman to Tim Ebling, dated March 29, 1988

D-23 Letter from Ira Friedman to Marjorie Moore, dated April 19, 1988

D-24 Letter from Jane T. Garrigan to Carnegie Delicatessen, Inc., dated May 6, 1988

D-25 Ledger sheet kept by Carnegie Delicatessen, Inc., showing tax withheld for complimentaries by Sands Hotel/Casino and Country Club; and ledger sheets of Carnegie Delicatessen, Inc., relating to the computation of rental payments for the period between July 1984 and December 1987, and attachments

D-26 Letters regarding Vincent Alegret from Russell S. Lupo, dated December 27, 1988; Jack Abbate, President of Regency Service Carts, Inc., dated December 1, 1988; Harris Flax, President of Sunshine Foods, dated December 1, 1988; Steven Slakoff, dated December 1, 1988; Tony Pilla, Account Representative for Marstan Industries, Inc., dated December 2, 1988; Richard A. Hammel, Chain Account Executive for DuBois Chemicals, dated November 30, 1988; and Reverend Ronald S. Falotico, Pastor of the Church of the Holy Spirit, dated December 5, 1988

D-27 Letter from Bradley H. Stone to Vincent Alegret, dated June 27, 1988

D-28 Letter regarding Carnegie Delicatessen from Harold R. Field, President of Field's Baking Corp., to Beatrice Tylutki, dated January 5, 1989

D-29 Letter regarding Milton Parker from Michael Friedman, Vice President of Amalgamated Bank of New York, dated December 27, 1988

D-30 A comparison in the loss of revenue due to decreased volume of complimentaries, coupons, RFB room charges and room service, with attachments

D-31 Photograph of Leo Steiner and Tommy LaSorda, manager of the Los Angeles Dodgers; letter from President Ronald Reagan to Leo Steiner, dated July 13, 1983; Photographs of President Ronald Reagan, Leo Steiner and others; letter from Judy Berkley and Jo Policastro of Gourmet Gumshoes/San Francisco Magazine, dated February 14, 1985; letter from Richard Scott to Leo Steiner, dated February 5, 1987; letter from Teddy Kollek, Mayor of Jerusalem, to Leo Steiner, dated March 31, 1985; letter from the Children's Museum of Manhattan to Leo Steiner, dated July 23, 1987; letter from Elaine Whitelaw, special assistant to the President of the March of Dimes Foundation, dated May 26, 1987; New York Times Article dated March 2, 1979; Leo Steiner's obituary in the New York Times, dated January 1, 1988; New York Times article regarding Leo Steiner; and an article regarding Leo Steiner

WITNESSES:

For the Petitioner, Division of Gaming Enforcement:

Bradley Stone
William DiGiuseppe
Paul Limy
Anne M. Brennan
Vincent D. Donlevie
William F. Bagnell

For the Respondent, Francine, Inc.:

Assemblywoman Dolores G. Cooper
Norman N. Cohen
Irvin Snyder
Myron Kaminsky
Cantor Edmond A. Kulp

John R. Siracusa, Jr.
Suzanne Kaminsky

For the Respondent, Carnegie Delicatessen, Inc.:

Norman Sverdlen
Vincent Alegret
Irwin Halper
Ira A. Friedman
Jacob Smith
John D. O'Brian
Milton Parker
Fred S. Klein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-263
LICENSE NO. 2382-21
REGISTRATION NO. 17392-40
OAL DOCKET NO. CCC 104-89
ORDER NO. 89-41-24

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
THOMAS CARUSO

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 20th day of November 1989, ORDERED that the initial decision is adopted; and

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

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

IT IS FURTHER ORDERED that this denial shall not affect Thomas Caruso's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /dsd
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 104-89
AGENCY DKT. NO. 89-EA-263

THOMAS CARUSO,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Thomas Caruso, petitioner, pro se
James Armstrong, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 19, 1989 Decided: July 17, 1989

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license no. 23828-21 issued to petitioner Thomas Caruso. The Division alleges, among other things, that petitioner committed acts which constitute a statutory disqualifier for licensure despite the fact that such acts were not prosecuted in the criminal courts, and; that he lacks the requisite good character, honesty and integrity for licensure.

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PROCEDURAL ASPECTS

The Division filed its letter of objection with the Commission on November 16, 1988. Petitioner requested a hearing on December 20, 1988 and on January 3, 1989, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing was conducted on March 20, 1989, followed by a hearing which was held on June 19, 1989. The record was closed on June 19, 1989.

ISSUES

The issues to be determined by this tribunal are as follows:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g to wit: N.J.S.A. 2C:20-4, Theft by Deception.

B. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act (Act).

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

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Petitioner is a 29 year old single male with no dependents who was issued a casino employee license on March 11, 1981. He is presently employed by Trump's Castle Hotel and Casino as a craps dealer and has been so employed for the last two years. Prior thereto, petitioner was employed at divers times at different hotel/casinos as a busboy by Caesars and as a dealer at Resorts, Bally's Playboy and the Sands.

The record demonstrates that between the dates of December 6, 1981 through January 3, 1982, respondent collected Unemployment Insurance Benefits (UIB) from the New Jersey Division of Unemployment and Disability Insurance program (NJDUDI). During this period of time, respondent was gainfully employed by Bally's Park Place Hotel and Casino while he collected $665 in UIB to which he was not entitled. Subsequently, commencing on May 20, 1982 and continuing to June 20, 1982, respondent again collected UIB while employed by the Sands Hotel and Casino. During this period, respondent was in receipt of $532 in UIB to which he was not entitled. As of June 3, 1988, respondent was indebted to the NJDUDI for a total amount of $1,667.03 which includes the overpayments to respondent plus fines and interest. As of the date of the hearing in the herein matter, respondent had made no efforts to repay the amount due and owing. Respondent testified that the first time he committed the act he did not know it was wrong to collect UIB while employed. He testified, however, that he knew it was wrong the second time he engaged in the deceptive activity. Petitioner, who presently earns approximately $27,000 per year, asserted that he could not afford to enter into a repayment program of $125 per month with NJDUDI.

Respondent incurred other debts which he has attempted to repay. One such debt was to First Card Service, for which his salary was subject to garnishment. He asserted, without further proof, that he had satisfied this debt as of June 1, 1989. Respondent also testified that he was voluntarily paying the United States Internal Revenue Service (IRS) $255 per month to satisfy a federal tax lien filed against him by the IRS. He presented no proofs in support of this assertion.

Petitioner is a high school drop-out who grew up in south Philadelphia (South Philly). His only brush with law enforcement officials occurred when he was a juvenile where he was involved with controlled dangerous substances (CDS). He has been arrested and convicted of operating a motor vehicle while intoxicated (DWI) as an adult in Pennsylvania and New Jersey. He has not been involved in any criminal activity since his eighteenth birthday. Craps dealing is the only true job petitioner has had and, it is one he loves to perform.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that petitioner's misconduct constitutes a disqualifying offense under section 86c of the Act. It asserts that petitioner's receipt of UIB to which he was not entitled in the amount of $1,197 is, under the New Jersey Code of Criminal Justice, the crime of theft by deception. N.J.S.A. 2C:20-4. Notwithstanding that petitioner had not been prosecuted for the offenses, it cites section 86g of the Act which provides that licensure may be denied to a person who has committed an offense enumerated in section 86c (1), whether or not the offense had been prosecuted under the criminal laws of this State.

Section 86c (1) of the Act sets forth the offenses under the New Jersey Code of Criminal Justice which, if committed, constitutes per se disqualification for casino employee licensure. Section 86c (1) lists, as a class of disqualifying offenses, those involving theft and related offenses which constitute crimes of the second or third degree under N.J.S.A. 2C:20-1 et seq. Theft by deception, N.J.S.A. 2C:20-4, is included in that class. N.J.S.A. 2C:20-2b provides for the grading of theft offenses and which states that:

> (2) Theft constitutes a crime of the third degree if:
>
> > (a) The amount involved exceeds $500.00 but is less than $75,000; ....

The record demonstrates that petitioner was in receipt of UIB in excess of $500. I **CONCLUDE**, therefore, that the Division has clearly established, by a preponderance of the credible evidence, that petitioner committed an offense which disqualifies him from licensure in the casino industry. See: *State v. Moore*, 158 N.J. Super. 68 (App. Div. 1978).

An applicant and/or licensee faced with the existence of one or more section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensures by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. These specific eight factors in section 90h of the Act are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed:

(6) Whether the offense was an isolated or repeated incident;

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

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

In consideration of petitioner's claim of rehabilitation, the following is found in this record:

1. Petitioner is presently the holder of casino employee license no. 23828-21 for a craps dealer. He has been employed in the casino industry as a craps dealer, off and on, since the issuance of the license on March 11, 1981. He is presently employed by Trump Castle Hotel and Casino under the license and seeks to have the license renewed in order to continue to work in the casino industry.

2. Although petitioner was not criminally prosecuted for receiving money to which he was not entitled, that does not diminish the seriousness of the offense. The facts disclose that petitioner was in receipt of an amount in excess of $500 which, under the Criminal Code, constitutes an indictable offense of the third degree. In view of his admission that he knew he was wrong to accept the second series of UIB payments, the offense must be considered to be serious.

3 . & 4. The record reveals that between October 4 and November 29, 1981, petitioner was unemployed and eligible for UIB. However, when he commenced employment on or about December 6, 1981, petitioner failed to advise NJDUDI and continued to receive UIB through January 3, 1982. Similarly, it appears that petitioner was unemployed between the period of April 4 and May 16, 1982 when he was eligible for UIB. Again, he failed to report his employment to NJDUDI upon his reemployment and continued to collect UIB for one month while employed from May 20 through June 20, 1982.

5. & 6. Petitioner was 22 years of age when he committed the offenses. The offense was committed once when petitioner knew it was wrong and improper for him to receive the UIB to which he was not entitled.

7. There were no social conditions or circumstances which contributed to the offenses.

8. Petitioner failed to produce evidence which would show his rehabilitation. The debt to NJDUDI is seven years old without any payment or arrangement for repayment having been advanced by petitioner. Petitioner's excuse that he could not afford to repay the agency at the rate of $125 per month, therefore, he ignored its demand for repayment; does not demonstrate rehabilitative conduct on his part.

In consideration of the above criteria, I can neither find nor conclude that petitioner is rehabilitated for the purposes of section 90h of the Act. Therefore, I **CONCLUDE** that petitioner has failed to affirmatively establish his rehabilitation.

Pursuant to N.J.S.A. 5:12-89b(2), petitioner is required, among other things, to establish his reputation for good character, honesty and integrity by the standard of clear and convincing evidence. Petitioner produced one witness, his

stepgrandfather, to testify on petitioner's behalf. Lawrence M. Brown testified that petitioner's father was killed when petitioner was two years of age. Subsequently, Brown's son married petitioner's mother where Brown developed a relationship with petitioner when petitioner was approximately six years of age. The petitioner and stepgrandfather have been in continuous contact for over 20 years.

Mr. Brown is aware that petitioner was involved in some criminal activity when petitioner was a juvenile but not aware of the specific conduct. Brown is also aware of petitioner's UIB debts and has attempted to counsel petitioner to repay the monies. Brown believes that petitioner is duty bound to repay the debt and petitioner knows that his grandfather is displeased with petitioner's refusal to pay.

Mr. Brown called this tribunal's attention to petitioner's demeanor; pointing out that petitioner is a highly nervous individual. He asserted that petitioner has difficulty coping with things in his life, however, petitioner has exhibited a complete change in attitude for the better while employed at the Trump Castle. The grandfather opined that petitioner is a good young man who needs a chance in life.

While I am sympathetic with Mr. Brown's love and concern for his stepgrandson, I cannot **CONCLUDE** that petitioner possesses the requisite good character, honesty and integrity demanded for licensure under the constraints of the Act. Petitioner was not honest when he accepted the UIB knowing he was not entitled to the money. A person of good character would not have engaged in such conduct in the first instance. If, however, an individual succumbed to the temptation, the person of good character, honesty and integrity would have immediately repaid the debt or, alternatively, entered into an arrangement to repay and satisfied the obligation. Petitioner did not.

I **CONCLUDE**, therefore, that petitioner has failed to demonstrate, by clear and convincing evidence, he possesses those characteristics as required by N.J.S.A. 5:12-89b (2).

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license no. 23828-21 issued to Thomas Caruso be and is hereby **REVOKED**.

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

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

17 July 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7/20/89
DATE

Kim Weaver
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1989
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

P-1 CBA Updated Credit Profile
P-2 Determination and Demand for Refund dated December 6, 1985
P-3 Schedule of Overpayments dated September 28, 1981
P-4 Claimant's Benefit Payment and Employment Record dated July 2, 1984
P-5 Claimant Ledger dated January 17, 1985
P-6 Claimant Inquiry dated March 23, 1988
P-7 Enforcement Requests Report dated May 3, 1988
P-8 Claimant's Benefit Payment and Employment Record dated April 29, 1988
P-9 Claimant Ledger dated March 24, 1988
P-10 Notice of Hearing dated May 4, 1988
P-11 Determination and Demand for Refund dated June 3, 1988
P-12 Schedule of Overpayments dated September 28, 1981
P-13 Claimant Inquiry dated June 8, 1988

WITNESS LIST

For the Petitioner:

Thomas Caruso
Lawrence M. Brown

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-190
LICENSE NO. 28992-21
OAL DOCKET NO. CCC 8831-88
ORDER NO. 89-31-12

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF JOHN P. CHAMBERS

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 28th day of August 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8831-88
AGENCY DKT. NO. 89-EA-190

JOHN P. CHAMBERS,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

John P. Chambers, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 5, 1989 **Decided:** June 19, 1989

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission on October 25, 1988, objecting to the renewal of the casino employee license of the petitioner, John P. Chambers. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on December 5, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on February 16, 1989, and at that time the parties agreed that the issues in this matter are:

1. Whether the petitioner committed acts which constitute a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:12-1b(2) (aggravated assault).

2 Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-1.90b.

3. Whether the petitioner may demonstrate rehabilitation, pursuant to N.J.S.A. 5:12-90h.

The hearing took place on May 5, 1989, at the Bellmawr Municipal Building in Bellmawr, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

In its review of the petitioner's application for the renewal of his casino employee license, the Division found out that on June 22, 1986, Mr. Chambers was arrested by the Bellmawr Police Department for aggravated assault, a violation of N.J.S.A. 2C:12-1b(2) (R-5). The police report regarding the incident indicates that the petitioner was involved in an altercation with his former wife and that Mrs. Chambers had told the police officers that the respondent struck her twice on the head and face with a crowbar (R-5). After his arrest, Mr. Chambers was indicted by the Camden County Grand Jury for aggravated assault with a deadly weapon (crowbar), a violation pursuant to N.J.S.A. 2C:12-1(b)(2); possession of a weapon (crowbar) for an unlawful purpose, a violation pursuant to N.J.S.A. 2C:39-4(d); and aggravated assault, a violation pursuant to N.J.S.A. 2C:12-1(b)(1) (R-1). The petitioner was denied admission into the Pretrial Intervention Program (R-3). After plea bargaining, Mr. Chambers pled guilty to the charge of possession of a weapon for an unlawful purpose and the other charges were dismissed (R-4). On October 30, 1986, Mr. Chambers was sentenced to five years' probation, was required to perform 250 hours of community service and was required to undergo alcoholic evaluation and treatment, if necessary (R-2).

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Prior to the incident, Mr. Chambers was employed as a roulette dealer at Bally's Park Place, where he had been employed for seven years. According to Mr. Chambers, he quit his job since he did not want any of his co-workers to know about the incident. Mr. Chambers is now working for his father.

At the time of the hearing, Mr. Chambers was still on probation and still had to perform 150 hours of community service. Mr. Chambers denied he had an alcohol problem; however, he did attend an alcohol program as part of his probation.

Except for the 1986 conviction, Mr. Chambers denied that he was ever arrested or convicted of a criminal offense. Specifically, Mr. Chambers denied that he was arrested in 1981 for assault and battery in Bellmawr, as indicated in the Camden County Probation Department report (R-4). According to this report, the 1981 complaint was dismissed on August 6, 1982. Since no substantiating evidence was introduced to show that Mr. Chambers was arrested in 1981, I will accept his sworn testimony that he was not arrested in 1981.

The above facts are not in dispute; however, during the hearing, there was conflicting testimony as to what happened on June 22, 1986.

Lorraine Chambers, the petitioner's former wife, stated that Mr. Chambers picked her up on the evening of June 22, 1986, and they went to the Woodshed Tavern. While there, they had something to drink and got into an argument about their marital problems, which eventually lead to a divorce. After they left the tavern, they continued to argue as the petitioner drove Mrs. Chambers to her home. When Mrs. Chambers started to punch him, the petitioner pulled into the parking lot of the Finish Line Tavern. Both of them got out of the car and they continued to argue in the parking lot. Mrs. Chambers stated that when some people came over, Mr. Chambers got a tire iron from the car and told the people to mind their own business. According to Mrs. Chambers, she was screaming and cursing in the parking lot when the petitioner pushed her, and she fell on the ground. She denied that the petitioner had hit her with the tire iron.

Mrs. Chambers stated on the evening at issue that she had taken some valium and had been drinking alcoholic beverages at home before she had been picked up by the petitioner. Mrs. Chambers stated that she does not recall what happened between the time the petitioner pushed her and when she woke up in the hospital. Mrs. Chambers said

she was unconscious because of the fall and because she had had too much to drink. Mrs. Chambers stated that she does not recall having any injuries, bruises, cuts, etc., on her face or elsewhere when she woke up in the hospital. According to the hospital records, Mrs. Chambers had bruises under her left eye, on her left check, and on her left knee, and she complained of pains from her left check, lower back and upper left leg (R-6).

Mrs. Chambers admitted that on June 22, 1986, she told the police officers that the petitioner had hit her with a tire iron; but, Mrs. Chambers does not recall giving a formal statement about what happened. However, she never went to the police station to correct her oral statement about what had occurred. Mrs. Chambers testified before the grand jury and she said that she told the truth—namely, that the petitioner had not hit her with a tire iron.

In his testimony, Mr. Chambers confirmed that he and his former wife had gone to the Woodshed Tavern where they stayed about two hours and discussed their marital situation. Mr. Chambers stated that they left the tavern because Mrs. Chambers was arguing loudly and that she "freaked out" in the car and started to hit him. The petitioner drove into the parking lot of the Finish Line Tavern and told Mrs. Chambers to get out of the car and to go into the tavern where she had some friends.

While Mr. and Mrs. Chambers were yelling at each other in the parking lot, a man who Mr. Chambers thought knew his former wife, came over and Mr. Chambers told him to leave them alone. Thereafter, about eight men started to come towards him and Mr. Chambers got a tire iron out of his car and told them to mind their own business. After they left, Mr. Chambers stated that he pushed his former wife and she fell down. Mr. Chambers denied that he had hit his former wife with a crowbar and stated that if he had done so she would have had more serious injuries.

After his former wife fell, Mr. Chambers saw that she was not unconscious, but was only under the influence of the combination of valium and alcohol. While Mrs. Chambers was still on the ground, the petitioner drove away and went back to the Woodshed Tavern, where he was later arrested. Mr. Chambers was told that Mrs. Chambers was taken to the hospital, and after his release, he and his father went to the hospital.

Both Mrs. Chambers and the petitioner testified that they are now divorced and now have a cordial relationship. The petitioner makes regular child support payments for the support of their infant son.

Mr. Leo Schuenemann testified and stated that he and his girl friend were at the Finish Line Tavern on the evening of June 22, 1986. As he and his girl friend were walking in the parking lot, he saw a girl crying and arguing with a man who had a crowbar in his hand. Mr. Schuenemann did not know either party; however, he went over and asked the girl to go into the tavern with them to get her away from the man. When the man would not let her go, Mr. Schuenemann and his girl friend went into the tavern and had someone call the police. Before the police arrived, he and several people from the tavern went out into the parking lot and found the girl lying on the ground. According to Mr. Schuenemann, the girl was bleeding from the head area and she was very upset. Mr. Schuenemann stated that Mrs. Chambers said something to the effect that she could not believe that he hit her. After the police arrived, Mr. Schuenemann left. At the time of the hearing, Mr. Schuenemann was unable to recognize either Mrs. Chambers or the petitioner, nor could he recall exactly what Mrs. Chambers told him in the parking lot.

As to what happened in the parking lot of the Finish Line Tavern, Deputy Attorney General Fusco argued that Mrs. Chambers' statements to the police officers and Mr. Schuenemann were made right after the incident and accurately reflected what had happened. Mr. Fusco argued that Mrs. Chambers has now had the opportunity to consider the legal consequences of her statement, and has fabricated a story to help her former husband keep his casino employee license. Mr. Fusco argued that Mrs. Chambers' injuries, as shown in the hospital records, corroborate her initial statement that she was hit with a crowbar by the petitioner.

Although I agree that Mrs. Chambers, who now has a cordial relationship with her former husband, might now want to excuse the petitioner's action, it is equally possible that her initial statements were an exaggeration of what occurred and had been motivated by anger. Based on the sworn testimony of both the petitioner and Mrs. Chambers, I **FIND** that Mr. Chambers did not strike Mrs. Chambers with a tire iron or crowbar on June 22, 1986. Further, I **FIND** that the medical reports of Mrs. Chambers' injuries do not support her initial statements to the police officers and Mr. Schuenemann, and I agree with the petitioner's argument that his former wife would have had more severe injuries if he had struck her face and hand with a crowbar.

CONCLUSIONS OF LAW

Mr. Fusco argued that the Division has shown that Mr. Chambers hit his former wife with a crowbar, and that this action constitutes the offense of aggravated asasult, which is a statutory disqualification pursuant to N.J.S.A. 5:12-86c and N.J.S.A. 5:12-86g. Further, Mr. Fusco argued that Mr. Chambers has presented no evidence to show his rehabilitation.

On his own behalf, Mr. Chambers argued that he was not guilty of any criminal offense against his former wife and that since he had done nothing wrong he did not have to show rehabilitation.

Based on the facts presented, I **CONCLUDE** that the Division has not shown a statutory disqualification. Mr. Chambers pled guilty to the charge of the possession of a weapon for an unlawful purpose; however, this charge is not a statutory disqualification pursuant to N.J.S.A. 5:12-86c. In addition, the Division has not proven by a preponderance of evidence that the petitioner committed the offense of aggravated assault, which is a statutory disqualification pursuant to N.J.S.A. 5:12-86c and N.J.S.A. 5:12-86g. Mr. Chambers' action on June 22, 1986 does constitute the offense of simple assault, a violation pursuant to N.J.S.A. 2C:12-1a; however, this offense is not a statutory disqualification pursuant to N.J.S.A. 5:12-86c.

Because the Division has not shown a statutory disqualification, it is not necessary to consider the issue of rehabilitation.

Lastly, I recognize that Mr. Chambers' action on June 22, 1986, raises a question as to his good character, honesty and integrity. However, this June 22, 1986 incident is an isolated event which occurred at a time when he and his former wife were having matrimonial problems. Since then, the petitioner has been divorced and has a cordial relationship with his former wife and there is no reason to believe there will be another confrontation between them similar to that which occurred on June 22, 1986. Therefore, I **CONCLUDE** that the petitioner has demonstrated his good character, honesty and integrity as necessary for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

DISPOSITION

In conclusion, I **ORDER** that petitioner's application for the renewal of his casino employee license be approved.

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

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

June 19, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

6/19/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 22 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

R-1 Indictment filed against John P. Chambers

R-2 Judgment of Conviction in the case of the State of New Jersey v. John P. Chambers

R-3 Application of John P. Chambers for admission into the Pretrial Intervention Program

R-4 Adult Presentation Report regarding John P. Chambers

R-5 Bellmawr Police Report regarding the arrest of John P. Chambers

R-6 Cooper Hospital emergency room records regarding Lorraine Chambers

WITNESSES:

For the Petitioner:

John P. Chambers

For the Respondent:

Lorraine Chambers
John P. Chambers
Leo Schuenemann

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-41
LICENSE NO. 66609-21
OAL DOCKET NO. CCC 6657-88
ORDER NO. 89-36-10

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

Complainant,

v.

RICHARD T. CONTE,

Respondent.

ORDER

This matter having been transmitted to the Office of Administrative Law for a hearing; and an initial decision having been filed with the Casino Control Commission; and the Commission having considered the entire record of the proceedings at its public meeting of September 6, 1989,

IT IS on this 27th day of September 1989, ORDERED that this matter be remanded to the Office of Administrative Law for the following reasons:

The Division of Gaming Enforcement filed a complaint with the Commission seeking revocation of the respondent's casino employee license based solely upon his arrest on May 10, 1988, for possession and use of marijuana, contrary to N.J.S.A. 2C:35-10, in the men's locker room of the former Atlantis Hotel Casino where he was then employed as a dealer.

With no notice to the respondent prior to the administrative hearing, the DGE asserted that his 1986 arrest for possession of marijuana and his 1987 and 1988 convictions for shoplifting and possession of marijuana, respectively,

were additional bases for disqualification. The ALJ found that although the DGE presented insufficient evidence to conclude that the respondent possessed marijuana on the premises of the Atlantis, he was, nevertheless, not qualified for licensure by reason of his lack of good character, honesty and integrity as a result of the offenses not cited in the complaint.

The Commission finds that it is improper to consider revocation of the respondent's casino employee license based upon aspects of his criminal record concerning which he was given no notice in advance of the hearing that the DGE would assert as undermining his good character, honesty and integrity. It is of no moment that the respondent bears the burden of proving that he maintains the affirmative criteria for licensure under sections 89(b) and 90(b) of the Act. The fundamental principal of due process applicable in these proceedings is notice and opportunity to present a defense to the allegations raised. That principle was disserved in this instance. The matter is therefore remanded for further proceedings at which the respondent will have the opportunity to demonstrate his qualifications for licensure after due notice of such allegations as the DGE chooses to raise against him.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6657-88
AGENCY DKT. NO. 89-41

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFOCEMENT,
Petitioner,
v.
RICHARD T. CONTE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Richard T. Conte, respondent, pro se

Record Closed: June 12, 1989 Decided: June 28, 1989

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent's casino licensure would be inimical to the policy of the Casino Control Act pursuant to section 86c(2) by virtue of his alleged use and possession of a controlled dangerous substance in violation of N.J.S.A. 2C:35-10 on May 10, 1988, pursuant to N.J.S.A. 5:12-86g. The Division also alleges that respondent lacks the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to section 89b(2), as incorporated within section 90b.

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PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on August 1, 1988. The respondent requested a hearing on August 15, 1988. On September 7, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 2, 1989, and the matter was scheduled for hearing on June 12, 1989 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was heard and the record closed on June 12, 1989.

ISSUES

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act within the meaning of Section 86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:35-10, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act?

FINDINGS OF FACT

The respondent, Richard Conte, was a part-time blackjack dealer within the Atlantis Hotel and Casino until his termination on May 14, 1988.

On the evening of May 10, 1988, the respondent was arrested and charged with possession and use of a controlled dangerous substance in violaton of N.J.S.A. 2C:35-10. The respondent, while at the Atalntis Hotel and Casino, was allegedly observed using marijuana in the men's locker room.

On August 30, 1988, the charge against the respondent was dismissed in the Atlantic City Municipal Court on motion of the prosecutor.

Detective Derrick Jones of the New Jersey State Police testified that he had no direct knowledge of the respondent's use or possession of a controlled dangerous substance. Respondent acknowledges, however, that he was found guilty of possession of controlled dangerous substance in the Ventnor Municipal Court on May 18, 1988. Respondent also acknowledges a shoplifting conviction on July 30, 1987, in Egg Harbor Township.

The above is uncontroverted, believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86(c) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casno Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimcal to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the presenst 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 particpation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the danger of unsuitable, unfair or illeal practices, method and activities in the conduct of gaming or the carrying on of the business of financial arrangements incidental to gaming operations.

However, in this matter, the Division's proofs are fatally flawed. The observable testimony of Detective Jones and the documentary evidence fail to establish a linkage between the charged act and the alleged behavior of Mr. Conte. Innuendo and probabilities which the Division asks to be noted are not proof that a violation has occurred.

Therefore, I **CONCLUDE** that the Division has failed to establish a violation of N.J.S.A. 2c:35-10 by a preponderance of the credible evidence. I further

CONCLUDE that Mr. Conte's continued licensure is not inimical to the policy of the Casino Control Act.

(B) N.J.S.A. 5:12-89b(2), as incorporated within Section 90b

Under section 89b(2) of the Act, as incorporated in section 90b, the petitioner is required to demonstrate good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 26, 1970) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good repuation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under section 89b(2) of the Act, it is incumbent upon the petitioner to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictnes intended by the Legislature, it is imperative that the character and background of the petitioner be scrutinized closely. Boardwalk Regency Corp. at 2.

I have had the opportunity to observe Mr. Conte's demeanor and credibility. Respondent has totally failed to sustain his burden of proof by establishing his good character, honesty and integrity by clear and convincing evidence. The record is devoid of any charcter references. Furthermore, the respondent's testimony was evasive and misleading.

Based on the totality of the circumstances, including respondent's convictions for shoplifting and possession of a controlled dangerous substance. I **CONCLUDE** that petitioner has failed to demonstrate the requisite good character, honesty and integrity for casino licensure pursuant to section 89b(2), as incorporated within section 90b.

ORDER OF DISPOSITION

Therefore, It is **ORDERED** that the license of Richard T. Conte be **REVOKED.**

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

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

6-22-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

6/23/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 3 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Statement of Jimmy Figeroa
P-2 Statement of Richard Conte
P-3 State Police Request for Examination of Evidence
P-4 Laboratory Report

For the respondent:

None

WITNESS LIST

For the petitioner:

Detective Derrick Jones, New Jersey State Police
Richard T. Conte

For the respondent:

Richard T. Conte

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-398;
89-CSI-5
OAL DOCKET NOS. CCC 5631-88
and CCC 7025-88
ORDER NO. 89-43-10

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

Complainant, :

v. :

ORDER

CHARLES CORNELL, CORNELL & COMPANY, :
INC., CORNELL LIFTING SERVICES,
AND CORNELL CRANE & HOIST, INC. :

Respondents.

AND :

APPLICATION OF CORNELL & COMPANY, :
INC., FOR A CASINO SERVICE INDUSTRY
LICENSE :

A hearing have been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by the applicant and the Division of Gaming Enforcement; and a reply to the exceptions having been filed by the applicant; and the Commission having considered the entire record of these proceedings at its public meetings of September 27 and November 1, 1989; and the Commission having been advised by counsel that Cornell Lifting Services and Cornell Crane & Hoist, Inc., have ceased operation,

IT IS on this 3rd day of NOVEMBER 1989, ORDERED that the initial decision is modified as follows:

> For the reasons stated on the record, Cornell and Company, Inc., is disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)(1), (2) and (g) by reason of Charles Cornell's commission of the following offenses: commercial bribery, N.J.S.A. 2C:21-10, and unlawful labor practices, in violation of the Taft-Hartley Act, 29 U.S.C.A. 186(a).

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Cornell and Company, Inc., is prohibited from conducting any business with any casino licensee or applicant or with any person acting on behalf of a casino licensee or applicant until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements between Cornell and Company, Inc., and/or Charles Cornell, individually, and any casino licensee or applicant or person acting on behalf of a casino licensee or applicant be terminated within 15 days of the date of this order; and

IT IS FURTHER ORDERED that Charles Cornell is disqualified pursuant to N.J.S.A. 5:12-86(c)(1), (2) and (g) and is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required

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

IT IS FURTHER ORDERED that the applicant's motion for a stay of this order pending an appeal to the Superior Court of New Jersey, Appellate Division, is hereby denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

JUL 12 1989

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NOS. CCC 5631-88 & CCC 7025-88

AGENCY DKT. NOS. 88-398 & 89-CSI-5

(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
CHARLES CORNELL, CORNELL AND
COMPANY, INC., CORNELL LIFTING
SERVICES AND CORNELL CRANE AND
HOIST, INC.,
Respondents,
and
CORNELL & COMPANY,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Mitchell A. Schwefel, Assistant Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Joseph H. Kenney, Esq., for respondents (Kenney & Kearney, attorneys)

Record Closed: May 26, 1989 Decided: July 6, 1989

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

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On June 21, 1988, the Division of Gaming Enforcement ("Division") filed a complaint with the Casino Control Commission ("Commission") against respondents, Charles Cornell, Cornell and Company, and Cornell Lifting Services, seeking revocation of a casino service registration held by the respondents. The complaint also requested an immediate suspension of the registrations. On July 11, 1988, Cornell Crane and Hoist was added as a respondent pursuant to a letter from the Division to the Commission.

On July 28, 1988, the Commission denied the Division's application for immediate suspension of the respondents' registration. Thereafter, on August 11, 1988, Cornell & Company filed an application for a casino service industry license, an act which had been requested by the Commission. In view of the objections to this licensure and the complaint seeking revocation, the matters were sent to the Office of Administrative Law as contested cases pursuant to N.J.S.A. 52:14F-1 et seq. On January 17, 1989, the matters were consolidated for hearing before Administrative Law Judge Jeff S. Masin.[1]

Plenary hearings before Judge Masin occurred on March 21, 22 and 23, 1989. Following the hearings, the parties submitted briefs on the issues in dispute. The record closed on May 26, 1989.

THE ISSUES

The Prehearing Order issued by Judge Thompson listed the following issues for determination in the revocation proceeding against the various related respondents.

A. Whether respondents committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: conspiracy to engage in racketeering, in violation of N.J.S.A. 2C:41-2(d), racketeering, in violation of N.J.S.A. 2C:41-2(c); conspiracy, in violation of N.J.S.A. 2C:5-2; falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a, bribery, in violation of N.J.S.A. 2C:21-10 and improper labor dealings, in violation of U.S.C. 186(a).

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[1]This action occurred subsequent to a prehearing held on November 4, 1988, before Honorable Stephen W. Thompson, ALJ. Judge Thompson issued a Prehearing Order on November 21, 1988.

B. Whether respondents' continued registration and application for licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)2 because they are alleged to have committed violations of N.J.S.A. 2C:41-2(d), N.J.S.A. 2C:41-2(c), N.J.S.A. 2C:5-2, N.J.S.A. 2C:21-4a, N.J.S.A. 2C:21-10 and 29 U.S.C. 186(a), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

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

D. Whether the respondent corporate entities possess the requisite good character, honesty and integrity for service industry licensure.

E. Whether or not a principal employee of a casino service industry applicant or registrant may avail himself of the rehabilitative provisions of the Casino Control Act.

The issues for determination in the casino service industry licensing proceeding revolve around the same issues cited in the Prehearing Order with respect to the revocation proceeding. They will be addressed below.

EVIDENCE

As background, evidence concerning the history and business of the Cornell enterprises was produced by Charles F. Cornell. Mr. Cornell, who describes himself as a contractor, owns Cornell and Company which recently merged with Cornell Lifting Services, which was formerly a company known as S.A. Lindstrom, Co., and Cornell Crane and Hoist. The company is in the steel and precast erection business and puts up the steel skeletons and precast concrete for high-rise buildings, bridges, power plants and other such large structures. The company has been in existence since the turn of the century when it was founded by Charles F. Cornell, the grandfather of the present owner. Mr. Cornell died in 1934 and his son Ralph purchased the company at a sheriff's sale. The company operated as Ralph Cornell Company and then Cornell and Company. During the Second World War, its projects included ordinance depots and highway construction. It was responsible for the bridges on the New Jersey Turnpike, the northeast extension of the Pennsylvania Turnpike, Route 295 and the Garden State Parkway in New Jersey.

Ralph Cornell ran the company through the 1970s and into the 80s and died in September of 1987.

Charles F. Cornell, the present owner, testified that the company had operated in Atlantic City since he was a child. Since 1979, when the casino industry began in the city, Cornell has put up the structures for several casinos, parking structures and other projects. Mr. Cornell is 49 years old, married and is the father of four children, ages 27, 23, 19 and 12. He was raised in Woodbury, left high school at the age of 17, went to work for Cornell and Company. He started doing painting and clean-up and then became an iron worker, joining Local 399 of the Iron Workers Union as an apprentice. He drove rivets, carried water and coal, worked on bridges and also went to school as part of his apprenticeship. He retains his union membership to this day.

In 1961 or 62, Cornell left the family company and went to work for S.A. Lindstrum, Co., a company in Philadelphia which his father had purchased. His father sent him there eight months after purchasing the company. Shortly thereafter Cornell bought the company from his father. He continued working in the field, doing estimating. His brother Ralph, who was two years younger and was a graduate of Brown and Rutgers, entered the business as the inside man, but died at the age of 25.

Mr. Cornell came back to the Cornell and Company enterprise in 1974 and 1975 to help in a field capacity. He still ran the Lindstrum Company as well and ran both jobs, although is father was actually operating Cornell and Company.

Cornell's first casino-related job in Atlantic City was Caesar's. The company worked on an expansion of the old Howard Johnson's Motor Hotel, which had become the Caesar's property. They then worked on Bally's after January 1, 1979. The company is always in the position of being a subcontractor to the general contractor and receives its work generally through bids placed with the steel fabricator who is providing the steel or the precast concrete for the enterprise.

Mr. Cornell began to take more control of the company in the years 1975 through 1980 as his father slowed. However, he took a leave of absence for two months in 1983 and only returned to the company when his father asked him to come back in an ownership position. He is now the sole owner, having gradually assumed control during his father's

declining years. However, although he is now the owner of the entire company, Mr. Cornell continues to work on cranes and can do iron work as a union member. He also does estimating.

The situation which is the focus of this proceeding involves the relationship of Cornell and his company with one Thomas Kepner, who was business manager of Iron Workers Local Union 350 in Atlantic City. Special Agent Ronald C. Chance, Supervisor and Special Agent in charge of the Office of Labor Racketeering in Atlantic City and a former New Jersey State Trooper, testified that in 1986-87 he was assigned to the Federal Organized Crime Strike Force which was looking into a complaint received from a member of Kepner's union that after working for seven months he attempted to use his health and welfare card and received a bill for services for which he was told there was no union benefits coverage. He complained to the international union and was told that the employer had made no contributions. He then approached Kepner for help and was refused. When the complaint was made to the Strike Force, an investigation began and it was discovered that Kepner had a relationship with various steel erection companies and was obtaining money for his mistress. Among these companies were CGS Steel and Tammy's Steel. It was learned that Kepner was living under a fictious name in a condominium owned by Kepner and West Jersey Industries. In April of 1986, a search warrant was obtained and during the search of this condominium an envelope was found in the bedroom drawer of Kepner's mistress addressed to Charles Cornell. As a result of the investigation and the finding of this envelope, Chance believed that he had probable cause to believe that Cornell was involved in some illicit activities with Kepner. A second envelope found was addressed to Tom and Mary and a letter from Mary's mother in 1979-80 led to the belief that the relationship between Kepner and Cornell went back some time. An agent was sent to Ocean City and determined that either Cornell or Cornell Steel had rented an apartment in a condominium which listed the tenant as Robert Brown, which was Kepner's ficticious name. A further investigation determined, and the parties stipulate, that from March 1979 to December 1979 Cornell and Company rented a condominium in the Ocean Colony Condominium in Ocean City owned by a individual named Tuoey and designated as Apartment No. 502. From January 1980 to December 1980 and then again under a second lease for 1981, Cornell and Company rented condominum No. 419 from one Connors. The rent for the first condo was $450 a month. The second condo rented for $450 a month and then $500 a month for the second year.

As a result of the information discovered, Chance went to the Woodbury office of Cornell and Company to speak to Charles F. Cornell. He brought a Grand Jury subpoena with him. He met with Cornell alone and tried to question him regarding the relationship between the union and Kepner and the company. He asked if there was any joint venture with another company in Atlantic City and asked about any gifts, loans or apartments. Cornell did not answer anything because he wanted time to think about it. He told Chance that he would let him know about testifying at the Grand Jury. Cornell reacted to the subpoena by commenting "he's going to ask me about the apartment." Chance had told him that this was the subject of the inquiry.

Mr. Cornell appeared before the Grand Jury, coming to the proceedings without counsel. He agreed that he had rented the condominums for Kepner, who had a girlfriend and wanted an apartment to keep her in. When asked if he had to do it, Cornell replied that he "did it as a favor."

In the discussions concerning the apartment at the Grand Jury, both those held before Cornell actually went into the Grand Jury room and apparently those in the Grand Jury itself, Mr. Cornell was not asked about whether he had supplied any vehicles to Kepner, nor did he volunteer anything concerning this.

Checks and accounting records for the payment of rent for the condominums were produced as evidence. These records show that the cost for the condos was charged against various jobs for accounting purposes under the category of room and board.

As a result of the investigation, Thomas Kepner was indicted by a Federal Grand Jury on September 30, 1987. along with his mistress, Mary E. Brown, and several other individuals. The indictment charged Kepner with racketeering activity in violation of 18 U.S.C. 1962(c) for, among other actions, the incidents involving the condominum at the Ocean Colony, as well as numerous actions involving other companies and individuals; a pattern of racketeering activity consisting of violations of 29 U.S.C. 186 (the Taft-Hartley Act), 18 U.S.C. 1503 (obstruction of justice), conspiracy, in violation of 29 U.S.C. 186(a)(2) and (b)(1) and numerous other violations of Federal Law.

Following the indictment there were three or four meetings held between federal authorities, including Assistant United States Attorney Paul Fishman, who was in charge of prosecution of the case, Chance and Cornell, for the purpose of preparing Cornell for the trial. During one of these meetings, Cornell volunteered information concerning the provision of a 1977 Blazer and a 1983 Blazer to Kepner. The federal authorities knew nothing about these prior to Cornell's telling them that he had provided the vehicles. Kepner asked for a Blazer at the time that he moved to a farm. Apparently, one of the employees for Cornell and Company had a 1977 Blazer which had approximately 100,000 miles on it. According to Chance's information, the vehicle was worth approximately $1,000 to $1,500. It was suppled to Kepner and listed on the records of Cornell and Company as having been "junked." Documentation of this was admitted in evidence. The Blazer itself was delivered to Kepner's barn, although Chance could not recall who brought it there.

In addition to the 1977 Blazer, Cornell also advised that a 1983 Blazer was provided for Kepner in 1983. Kepner had seen this vehicle at a dealership and told Cornell that he wanted it. According to what Cornell told Chance, he argued against providing the vehicle, but ultimately gave in and purchased it through a friend, Bill Pine, who was a used car dealer who had previously purchased vehicles for Cornell and Company because he could get them at a cheaper price than the company could get them itself. The purchase price of the 1983 vehicle was approximately $13,000 and either Cornell himself or Cornell and Company paid for it, giving cash to Pine who obtained the vehicle from the dealer and then turned it over to Kepner. The vehicle was registered to Mary Brown or Robert and Mary Brown. Robert J. Brown was actually Mary Brown's brother, but Kepner used the name as an alias. Documents from the records of Kardon Chevolet, from whom the vehicle was purchased, show that the vehicle was actually purchased for $14,228.

The government was unaware of the provision of these vehicles at the time that the indictment was returned against Kepner. As a result, this activity was not included in the charges in the indictment.

On cross-examination, Mr. Chance characterized the situation involving Kepner and Local 350 as demonstrating the epitome of a corrupt labor union. There were indications that the union and Kepner were doing business with organized crime figures. In addition, Kepner extorted money from the rank and file, in large part through a

"Christmas collection" which involved individuals signing a Christmas card for Kepner and paying monies to him. In essence, people were paying for the privilege of working, which in fact was their right. In addition, they would pay to get overtime jobs despite the fact that they were legally entitled under the contracts to work overtime. When Kepner was dissatisfied with the actions of a union member he would have the individual blackballed. Those who did not contribute to the Christmas fund were also blackballed. When Kepner was unsatisfied with a business's response to his demands, he would threaten labor disruption. Kepner traveled with "body guards," was himself a very large man, and worked through fear. He had associations with an organized crime run business, Nat Nat. In one instance, a company known as G and H Steel Service was having serious labor problems. When it formed a joint venture with Nat Nat Steel, its labor problems immediately disappeared. Nat Nat could do whatever it wanted to do. When other companies would fire poor workers, the union would send them right back to the job the next day.

Chance confirmed that no grant of immunity was ever given to Mr. Cornell or his companies. However, eventually a letter was issued from Mr. Fishman to Edwin Jacobs, Jr., an attorney representing Cornell, in which Fishman indicated that no prosecution of Cornell or his companies would take place. This letter was issued in late January 1987, prior to the Kepner trial.

In addition to information concerning the Blazers, Mr. Cornell eventually revealed that he had been asked by Kepner to lie under oath before the Grand Jury. He explained that among other things Kepner had suggested that Mary Brown should see Cornell's bedroom in order to become familiar with its details so that Cornell, who at the time of the provision of the condominums was a single man could claim that Mary Brown was in fact his girlfriend and was living with him in the condominums. During his testimony, Chance was asked whether he had ever been advised of any threats on Cornell's life and he said that he had heard nothing of that up to the time of this hearing, although a threat from Kepner would not have been at all unusual.

The witness acknowledged that Cornell's testimony was instrumental in getting a conviction of Kepner. He further agreed that if contractors would stand up to extortion attempts and demands, this would greatly aid in preventing such activities. However, he also acknowledged that Cornell knew that Kepner had a reputation for violence. The witness explained that his understanding of the benefit received by Cornell and his

companies as a result of his provision of the condominums was that his jobs were only required to have one shop steward in Atlantic City, rather than one on each site as would be the normal practice. As a result, since the shop steward makes more money than other employees, this arrangement would allow for Cornell to employ fewer employees at this higher rate of pay. He acknowledged that the Collective Bargaining Agreement governing Cornell's work in Atlantic City might call for a working shop steward and that it would not be beneficial if the shop steward provided was a "walking steward," that is, one who did not actually work while at the site.

Agency Barbara K. Friese of the Division of Gaming Enforcement testified that she and another agent went to the offices of Cornell and Company and examined company records which showed the costing out of the rental expense for the condominums to room and board expenses for specific company projects. Thus, the expense for the rentals were charged to the overall cost of errecting the particular building in question.

In addition, Ms. Friese examined corporate tax returns for 1979, 1980 and 1981 and noted that on Schedule A, under "cost of operations," all direct and indirect costs attributed to the jobs were listed as deductions for income tax purposes, including job travel and board in the amount of $63,000 for the year ending December 1980, a figure which would presumably include the condominum rental costs which had been attributed to room and board in the companies accounting records. Such expenses, which are indirect costs, would have an effect of reducing the taxable income.

On cross-examination, Friese noted that an examination of the prohibited vendor list showed no indication of any activity by Cornell with any of these vendors. All bank affiliations appeared all right, and financial relationships with Local 350 were current with respect to Health and Welfare payments, with no indication that the company was ever in arrears or any discrepanies with respect to payroll, daily time sheets, etc. Cornell deals with approximately 20 locals. However, no other relationships with other unions were pursued. In addition, there was no negative information from the FBI, the State Crime Information Center (SCIC), the National Crime Information Center (NCIC), etc. Checks with respect to these authorities were made concerning Cornell and Messrs. Shepard and Dougherty, employees of the company.

Called as a witness for the Division, Charles F. Cornell, testified that he has known Kepner for approximately 20 years. Their direct dealings began in 1975. At that time, the company was putting up the bridge between Atlantic City and Brigantine. Before 1979, Cornell did associate socially with Kepner in a few instances when they went out on boats together. Cornell brought a boat up to New Jersey from Virginia with Kepner in the early 1980s.

Kepner had several offices, one in his house in Ventnor. Cornell was in Kepner's house perhaps between half a dozen and a dozen times. He also served as a management trustee for the Iron Workers Pension Union for Local 399 in Camden. Kepner served as a union trustee for Local 350 of Atlantic City. Cornell had also been part of the negotiating team for contractors associations, although he did not serve in this capacity between 1979 and 1988. During these negotiations, Kepner would be a representative for Local 350.

The initial discussion concerning the condominium occurred in 1979. Kepner called Cornell and told him that he wanted to see him about something. He asked him to meet him at the parking lot of Ocean Colony Condominum in Ocean City, but did not say what for. When he arrived, Kepner asked him to come inside and showed him an apartment, asking him what he thought of it. Cornell's response was "it's nice." Kepner then said "I'd like to get this apartment." At the time, Cornell was doing business in Atlantic City for several casino projects and was using the services of Local 350. Kepner explained that he had a girlfriend, but that he was married and he needed the apartment for his girlfriend. He did not want it in his own name so that his wife would not find out about it. He wanted Cornell to pay for the condominum. After some discussion, Cornell "finally agreed to do it." According to the witness, it was not necessary for Kepner to threaten him and he did not do so. Cornell knew Kepner for a long time, knew how he operated, and did not have to be told what would happen if he did not pay the money. This was the first time that Kepner had ever asked him for any money. However, he had previously interfered with Company work. One instance occurred during the Brigantine bridge project. The company needed a boat for its operations. According to Cornell, a Local 350 member asked him to look at his boat. He did, but saw that it would be inadequate for the job. The company used its own boat, however shortly thereafter the boat was found sunk. The pump lines had been cut. In Cornell's words "the union sunk the boat."

On another occasion, when Kepner's father-in-law was still the union business agent, the company was involved in putting up a project in Ventnor and had to put an elevator up outside the building. The job started on a Saturday. Two employees and a foreman were present. On Saturday night, they were told not to come back by union representatives. On Sunday, a whole new crew arrived which had to be trained all over again, thus causing the job to run late into Sunday night. The union had stepped in to put its own desired individuals on the project that Sunday.

According to Cornell, at the time of his 1979 conversation with Kepner concerning the condominum, he was unaware of the Taft-Hartley Act, other than having heard of it in connection with wages and hours issues. However when he agreed to pay for the condominum, he "knew it was wrong." In further explanation, Cornell indicated that he equates illegality with "something wrong," which apparently means that to him illegality may include something which is not actually a violation of some law. However, in further explanation, he indicated that the situation "made him not feel right." However, he did not know it was a violation of a law.

Cornell directed his office staff to pay the rental costs. He told them he was paying it for an apartment, but did not tell them who it was for. He did not specifically tell them to bill it to any particular job. The accounting aspect was handled by personnel in the accounting department and he assumed that the checks were paid out in the proper fashion when they became due. Eventually, there was a discussion in December 1979 concerning another apartment. Kepner again called him and asked him to come to the parking lot. They went upstairs and this time he took him to another apartment and told him that he wanted to move from the first condo to this one. Again, Cornell agreed to pay for the apartment. He again instructed the company to pay, giving instructions to a Mr. Dickerson, a "accountant type" in the office.

The witness never asked Mr. Kepner to pay back the money for the condominiums. He was unaware whether the checks were deducted for income tax purposes.

In connection with the 1977 Blazer, he recalled that Kepner called him and asked him to see him at a diner. This was sometime after the first apartment had been rented. Kepner had obtained a farm and he needed a four-wheel farm vehicle. Kepner knew of an

employee of Cornell's who used an old truck on the job. Cornell testified that the company was going to get rid of the truck anyway and therefore when asked for it by Kepner, he replied "sure." Kepner did not offer any money and Cornell did not ask for any. The truck was perhaps worth a $1,000, although this was "a matter of opinion." Cornell was not sure of the details of how it was transferred and was unable to refresh his recollection concerning the transfer by reference to the transcript of Kepner's criminal trial. Someone marked the company file for this truck as "junked."

In approximately late 1982, another conversation at a diner concerned another Blazer. Kepner started talking about a truck that he had seen and wanted. Cornell tried to "discourage him." By the time they left, the situation was not resolved, but after another meeting, Cornell, who "knew how Kepner operated" and "didn't have to be threatened" but was aware of the "veiled threat" behind Kepner's demands, determined to agree to the purchase of the truck. In his words, despite his arguments Kepner "only listened to what he wanted to hear." Cornell had a personal relationship with Bill Pine, who was in the car business, and he asked Pine to go to the dealership and obtain the truck because Pine could get a better price than Cornell could. Although Cornell apparently provided cash to Pine for the purchase of the truck, he was not sure of where the cash came from, whether it was his personal money or the companies, and he only realized cash had been paid shortly before his testimony during this administrative hearing. The truck was given to Kepner at his instruction.

Mr. Cornell acknowledged that throughout the time from 1979 on, he never contacted any law enforcement or Department of Labor personnel concerning Kepner's demands. He also never spoke to the head of the Iron Workers District Council with whom he was "on good terms."

When Special Agent Chance came to his office on June 4, 1987, Chance made some mention of the apartment. At the Grand Jury, Cornell answered the questions that were asked of him and told about the rental of the condominums. He was not asked about the Blazers and he did not volunteer anything about them. He knew it was wrong to give them to Kepner.

The witness explained that he had several conversations with Kepner before and after the Grand Jury proceeding during which Kepner attempted to get him to lie

concerning their relationship. The day before the Grand Jury meeting, Cornell attended a Health, Welfare and Pension meeting in Pennsylvania. This meeting had been called for the purpose of asking Kepner to step down as a trustee. Everyone present knew that both Cornell and another individual at the meeting had been subpoenaed to the Grand Jury. Kepner and he spoke and Kepner said "You know what you're going to say." Cornell just "shook his head and left." According to Cornell, Kepner wanted him to say that he had rented the condominium in order to live there with Mary Brown. On June 10, 1987, approximately one month after the Grand Jury appearance, Kepner called him up and asked him to meet him in a parking lot in Somer's Point. He urged Cornell to explain that Mary Brown was his girlfriend. In September or October, he saw Kepner at a union pension meeting in the Scranton-Wilkes Barre area. He was again asked to lie. Cornell told Kepner nothing in response to this. Again, there were no outright threats made toward Cornell. He felt that the less said, the better off he would be.

The witness acknowledged that he told Mr. Chance that he rented the condominum for Kepner as a "man-to-man" favor. However, he testified at the hearing that "the only reason he did anything was cause he intimidated me."

At Kepner's criminal trial in Federal District Court in May 1988, Cornell was questioned on cross-examination by counsel for Ms. Brown whether he had testified in response to questions by the Assistant United States Attorney and the attorney for Kepner that he rented the condominums "for a favor for Tom Kepner?" He responded affirmatively to this question as well as to the follow-up question "and you believe you testified that there were no promises made, but that it was a favor given to Mr. Kepner?" Finally, he was asked "man-to-man talked about personal matters. You were sympathetic and you did the favor man-to-man?" and answered "Yes, sir."

Cornell acknowledged that prior to the scheduled trial date in the Kepner matter in late January 1987, he had a conversation with Assistant U.S. Attorney Fishman who became quite visibly upset when he learned of the information concerning the Blazers and hollered. After this Cornell retained Edwin Jacobs, Jr., Esq., to represent him. Jacobs apparently "obtained immunity" for him, although he only learned about this from a telephone call from Jacobs and never specifically asked for immunity. (In fact, technically immunity was not granted, although a letter of non-prosecution was issued.)

In addition to the conversations in which Kepner attempted to get Cornell to lie on his behalf, Cornell also received information of a threat to his person. He was advised of this by a general foreman for his company, Tom Jankowitz, who told him that he had a message that if Kepner went to jail or if he, Cornell, did not say the right thing at trial, he would be run out of Atlantic City and that he better get a body guard. He had a discussion with Jankowitz concerning obtaining a gun. He was not told who the message was from. Jankowitz told him that he had spoken to Gil Lickfield, a retired state trooper who works for Cornell in the safety field. Cornell spoke with Lickfield, who him that if he wanted some body guards, Lickfield could arrange for them. However, he decided not to pursue this.

The witness asserted that he was not thinking of the Internal Revenue Code when he made the arrangements with Kepner and instructed his personnel to pay for the condominum. His accountant does his taxes. He never told anyone to destroy or hide anything. The witness denied that he ever advised anyone in his office to produce phony records regarding the condominum expense. He acknowledged that no record could be found concerning where the cash for the 1983 Blazer came from. He denied that he ever asked Kepner for any favors or ever asked him for some sort of arrangement concerning the shop steward. In essence he was paying for a worker who was not working, and he had had walking stewards ever since he began working in Atlantic City prior to March 1979.

The witness presented records concerning equipment and labor donations as well as major charitable contributions made by the company in 1987 and 1988. He described charitable work as "something which goes on every week" and for which records are not always kept.

DISCUSSION AND ANALYSIS

A careful review of the evidence presented by the various witnesses and through the documents introduced into evidence supports a conclusion as to the facts concerning what occurred in connection with the relationship between Mr. Cornell, his company and Thomas Kepner. From the evidence, I **FIND** that in 1979 Mr. Cornell, who had been involved in the steel erection business for quite some time, was approached by Mr. Kepner, a union official with whom he was quite familiar, and solicited to pay for a condominium for Kepner and his mistress which was to be leased in the name of Cornell as

a means of hiding Kepner's relationship with the woman. At the time of their discussions, Cornell was well aware of Kepner's manner of doing business as business agent for the union. From prior experience, Cornell knew that Kepner, and before him, Kepner's father-in-law, Mr. Norton, were not above the use of threats, certain forms of violence, and various manuevers which had the potential of interfering with the efficient operation of a construction-oriented business in the Atlantic City area. In addition, Kepner was well aware from experience in other jurisdictions of the kinds of difficulties which a union and its officials could cause for a company, both those arising under legitimate complaints and grievances dealing with the labor-management relationship under contractual arrangements and, more significantly, those difficulties which were not rooted in legitimate labor-management activities, but instead arose from extra-contractual, frequently illegitimate exercises of labor manipulation, assertions of power, and outright illegalities. When Kepner asked Cornell to pay for the apartment, I **FIND** that Kepner made no direct threats against Cornell and/or Cornell's business, nor did he make any statements which in their wording specifically implied any such threats. However, it was absolutely reasonable for Cornell to understand from the nature of the conversation and request made that Kepner was not merely asking for Cornell to pay for the condominium, but was in fact demanding such an accommodation from Cornell. There was every reason for Cornell to believe that had he not complied, Kepner would have managed to find means to retaliate against Cornell for his intransigence by invoking his power and authority as business agent for the union to interfere with the safe, proper and efficient operation of Cornell and Company projects in the Atlantic City area. As a result, I **FIND** that Cornell did pay for the lease on both the first and subsequently the second condominiums under the shadow of a threat, with the clear understanding that his refusal would carry with it a significant likelihood of prejudice to his company's operations, if not to himself personally in a non-monetary sense. Further, I **FIND** that the initiation of this payment demand and of the entire "scheme" came from Kepner. It was Kepner who had a mistress, who sought a secure location for his relationship with her, who made the "request" to Cornell for Cornell to obtain both the condominiums and later the Blazers. There is no evidence that Cornell initiated, suggested, or in any sense sought to begin this relationship with Kepner. In this sense, there is no doubt but that Mr. Cornell, as the recipient of the demand, as the person under the shadow of the implied threat, was a "victim."

I **FIND** that Mr. Cornell paid for the condominums on behalf of Kepner spending a sum of approximately $16,800 for rent of these condominiums and that the payments were all made by Cornell and Company. The evidence supports a finding that in connection with these payments, Mr. Cornell instructed his bookkeeping personnel that he was renting a location in Ocean City in connection with work and although it is not clear whether he specified which job the expense was to be charged against, there is no doubt from the documentary evidence that in fact the expenses were charged as room and board against actual Cornell and Company projects. In addition, as will be discussed below, there is every reason to believe by a preponderance of the credible evidence that Cornell and Company did use these condominium expenses as part of its cost of doing business for federal income tax purposes and did deduct the costs on its taxes.

The evidence further supports findings that Mr. Cornell, after taking several months off from work in 1983, returned to the company and broke off the payment relationship with Kepner. There is no clear evidence in this case as to exactly how that occurred. There is no evidence of any specific discussions between the men or any specific commuication by Cornell in which he told Kepner that Cornell's company would no longer support Kepner's relationship by providing it with a Ocean City residence or that he would no longer supply any additional items requested by Kepner. Be that as it may, the evidence clearly indicates that the payment relationship ended in 1983.

Further, I **FIND** that Mr. Kepner was alerted to the federal government's inquiry into the activities of Kepner and his union when Mr. Chance and his personnel undertook a search of Kepner's condominium, found evidence linking Kepner and his mistress and the condominium to Cornell. Eventually Chance went to Cornell and Company's Woodbury office to speak to Cornell. I **FIND** that once he was alerted to the investigation, Mr. Cornell responded to the Grand Jury subpoena, appeared without counsel, spoke candidly to the Grand Jury, provided them with vital evidence concerning the relationship with Kepner, and I **FIND** that there is every reason to believe that he had the intention of, and eventually did in fact, cooperate fully with the federal authorities in the prosecution of Kepner, including presenting testimony of a vital nature at the Kepner trial in Federal District Court. With respect to the details of the information which Cornell provided to the Grand Jury and the federal prosecutor, I **FIND** that he initially only advised the authorities of the payments for the condominiums, matters which he was aware that the

government had information about. The information concerning the provision of the Blazers only occurred at a later date. It is not completely clear why he did not raise this at first, although according to Kepner, he did not do so because he was not asked about the provision of the Blazers or anything other than the condos. It is not clear why Mr. Cornell did not feel it appropriate, or did not see the need, to advise the prosecutors and/or the Grand Jury that his company had done this "favor" for Kepner as well as providing the rent for the condominiums. However, there is no doubt that ultimately Cornell did advise the prosecutor of the provision of the Blazers, a circumstance which apparently was not known to the federal authorities. In this sense, Cornell's eventual revelation gave the prosecutors further information which they might not have otherwise had concerning Kepner's activities. The same may be said concerning Kepner's requests for him to lie to the Grand Jury and at trial, requests which I **FIND** were in fact made and which Cornell eventually told the prosecutors about. As for Cornell's retention of Edwin Jacobs, Jr., Esq., as his attorney and the issuance of the letter of non-prosecution, I **FIND** that after Cornell revealed the information concerning the Blazers at the January 30, 1988 meeting with Assistant United States Attorney Fishman, Fishman's outbursts over the revelation of this previously undisclosed material reasonably caused Cornell to believe that he ought to seek the "protection" of representation by counsel. Mr. Jacobs, a highly competent criminal defense attorney, acting in the best interests of his client, apparently made certain requests of the U.S. Attorney with respect to some assurance that Cornell and Cornell and Company would not be the subjects of prosecution. I credit Mr. Cornell's testimony that he did not make any specific request of either Jacobs or Fishman for the issuance of such a protective letter, much less for a grant of immunity. However, Jacobs apparently negotiated as representative of the Cornell interests and obtained the letter of non-prosecution. There is no evidence whatsoever from which I can conclude that Mr. Cornell would have backed out of his agreements to aid the United States Attorney in the prosecution of Kepner had the letter of non-prosecution been issued. Of course, one cannot determine the hypothetical question of what might have happened had Mr. Jacobs's requests for such a letter not been granted. It is always possible that Jacobs might have concluded that it was not in Cornell's interest to cooperate and that Cornell might have agreed with the advice of his counsel and not done so. However, there is no clear evidence of that possibility, the issue is hypothetical at best, and given all of the facts, it appears that Cornell had every intention of and probably would have cooperated with the federal government even had he not been granted the letter of non-prosecution. Further, I **FIND** that no actual grant of immunity ever issued in favor of either Cornell individually and/or his company.

In addition to the above findings, I **FIND** that from the initiation of Kepner's "requests" in 1979 until Mr. Chance appeared at the Cornell and Company office in Woodbury in 1987, Mr. Cornell never made any attempt whatsoever to advise any law enforcement authority or anyone with any possible supervisory or control position over Mr. Kepner, such as the international union, the district representatives, etc., of Kepner's activities. While there is no way of being certain what might have occurred, there is nothing in the evidence which suggests that had the federal government not come across Kepner's involvement with the Ocean City condominums and linked it to Cornell that Cornell or anyone on his behalf would have ever advised the authorities of what had occurred. Thus, I **FIND** that while Mr. Cornell certainly did cooperate once he was approached by the federal government and became aware of their investigation and their having linked him to Kepner and Kepner's activities, that that cooperation came only after he was aware that someone knew something about the activities and not out of any conscious determination by Cornell, either at the time of the incidents or in the years following the termination of the payment schemes in 1983 that he, Cornell, or anyone on his behalf, should advise any governmental authority that he had been paying Kepner any monies or providing any benefits to Kepner under the "implied threat."

With respect to Mr. Cornell's state of mind and knowledge concerning the propriety and/or impropriety/illegality of his provision of condominums, trucks, etc., to Kepner, I **FIND** that Mr. Cornell always knew from the very beginning that there was something uncomfortable, something "wrong," something not quite moral, something improper about giving any of these benefits to Kepner. Regardless of whether Cornell knew that he was violating any statutory law by providing these things to Kepner, from his experience with unions generally, and more particularly with Kepner and Norton, Cornell knew that these union officials were not above making demands for provision of benefits to persons such as Cornell who did business with the union and he knew that providing the benefits was not the right thing to do. As for his knowledge of statutory law, although I **FIND** that Mr. Cornell was without question an experienced and knowledgeable businessman in the steel erection business with a reasonable amount of knowledge of the negotiations of contractual arrangements with the unions and with some experience in both legal and illegal activities of the union vis-a-vis the management side, I **FIND** no clear evidence to convince me that Cornell was in fact aware of the specific provisions of the Taft-Hartley Act which would have alerted him to the fact that making the payments was a violation of statutory law, as opposed to some moral wrong. At the same time, I

must admit some feeling that somehow or another even if he did not know the specifics of what the laws might be and what might be being violated by Kepner that Cornell, as an experienced businessman working in the construction trades, must have had some feeling, some knowledge, some reaction that being "forced" under "implied threats" by union officials to provide them with benefits in order to assure that his company would not suffer labor unrest must have constituted some violation of some federal and/or state law in connection with labor-management relations, or more generally in connection with criminal law. Given what I **CONCLUDE** must have been some inclination or intuition on Cornell's part that the provision of these funds was more than merely a moral wrong, but might well constitute a violation of the laws of the United States and/or the State of New Jersey, I must **CONCLUDE** that Cornell's expression of his belief that what was occurring was "wrong" was founded in something more than mere qualms of conscience that he was violating some moral code, religious or otherwise. Thus, while Cornell may not have actually been aware that what he was doing violated the Taft-Hartley Law, I believe that he knew deep inside that his actions were wrong in both a moral sense and were likely to be wrong in some perhaps not clearly defined legal sense. The simple answer to this, as will be discussed further below, was that if he had any doubts at all that there was anything wrong with what he was doing, he could have discussed the matter with his own corporate attorneys or could have called them to the attention of the National Labor Relations Board or some other authority who could have provided him with information as to whether what he was doing was in violation of federal or state law. There is no evidence at all, nor does Mr. Cornell claim, that he made any such attempt at any time to determine whether what was occurring was a violation of the laws of the United States or the State of New Jersey.

Finally, with respect to conclusions as to what if anything by way of benefit Mr. Cornell and/or his company received as a result of his provision of the condominum and/or trucks to Kepner, I **FIND** that the real benefit which Mr. Cornell believed that he was obtaining by providing the items requested was labor peace. Although much was made during the hearing of the question whether there was a benefit conferred in that Cornell had a walking steward who covered all of Cornell's building sites in Atlantic City as opposed to having a working shop steward at each location, and although much argument occurred as to whether there was any benefit in fact in having a non-working, single walking steward as opposed to a separate working steward at each site and whether the presence of an extra worker at each site as opposed to whatever financial savings

might have occurred in only having one steward as opposed to more than one if there were several sites in operation at once time, the real benefit which Cornell thought he was getting was not something dealing with this savings of money, if any, in having one steward, but was instead what he believed would be the lack of interference on the part of Kepner and the union in the efficient operation of Cornell activities. With a previous history in Atlantic City which included the incident involving the sinking of the Cornell Company boat and the incident involving the construction of the elevator previously described above, and from his own experiences in Baltimore and in other circumstances, Cornell knew that if Kepner wished to disrupt Cornell and Company operations in Atlantic City, he had the power and authority to do so. When Kepner requested provision of the condominum, Cornell was fully aware that if he refused the potential existed that Kepner would invoke his powers to cause difficulties for the company. Given his concern with this possibility, and the knowledge that the potentiality could be brought to fruition as had occurred in the past, Cornell did not agree to provide the condominium in order to get one steward as opposed to several, but instead in order to achieve the more broad-based goal of labor peace. Although the respondent here asserts in its brief that the Division has failed to define "labor peace" and has not shown that provision of a condominium induced Kepner to restrain his members from invoking normal labor-management grievance procedures, requirements of contractual obligations on the part of the company, etc., those were not things which Cornell really feared, nor were they the basis of the implied threat that Cornell perceived. It was instead the extra-legal, extra-contractual problems which Cornell knew that Kepner could cause and which he wished to avoid which led Cornell to accede to Kepner's requests. Thus, I **FIND** that by paying for the condominiums, Cornell did believe that he was obtaining a benefit from Kepner, the benefit of labor peace. Whatever additional benefit may or may not have flowed from the single walking steward is really a secondary and relatively unimportant consideration.

The Division charges that Cornell's conduct constituted a violation of the commercial bribery statute, N.J.S.A. 2C:21-10. This statute provides:

> a. A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as;
>
> (1) An agent, partner or employee of another;

> (2) A trustee, guardian, or other fiduciary;
>
> (3) A lawyer, physician, accountant, appraiser or other professional advisor or informant;
>
> (4) An officer, director . . . in the direction of the affairs of an incorporated or unincorporated association;
>
> (5) A labor official, including any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund; or
>
> (6) . . .

As the statute now reads following an amendment effective October 20, 1986, it provides that:

> c. A person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

The amendment removed from the above sentence a designation of the crime as one of the fourth degree. The amendment further added the following:

> b. If the benefit offered, conferred, agreed to be conferred, solicited, accepted or agreed to be accepted in violation of this section is $75,000.00 or more, the offender is guilty of a crime of the second degree. If the benefit exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. If the benefit is $1,000.00 or less, the offender is guilty of a crime of the fourth degree.

The primary focus of the post-trial brief filed by the Division is on the alleged violation of this commercial bribery statute. The Division argues that Cornell's payments to Kepner to buy labor peace constitute actions which automatically disqualify the respondent from licensure as a casino service industry because the offense is an enumerated statutory disqualifer under N.J.S.A. 5:12-86c(1), which provides that violation of N.J.S.A. 2C:21-1 et seq., offenses generally labeled as forgery and fraudulent practices, are automatic disqualifiers where they constitute crimes of the second or third degree. Since the amount of money and benefits allegedly supplied to Kepner were in the range above $1,000.00 but below $75,000.00, the alleged offense would be of the third degree.

Respondent contends that if its conduct is found to have been in violation of the commerical bribery statute, then such conduct at the time it was committed was no more than a fourth degree offense, that is, a disorderly person's offense, and therefore cannot constitute an enumerated disqualifying offense. Moveover, respondent denies that it engaged in commercial bribery, contending instead that the benefits were forced, compelled, extorted from Mr. Cornell and therefore did not constitute illegal conduct.

Petitioner's brief points to several prior determinations of the Commissioner which dealt with instances of bribery. In Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584 (CCC 1979), aff'd O.B. Dkt. No. A-4106-79T1 (App. Div. June 24, 1981) (unpublished per curiam), and in Playboy-Elsinore Casino Application, 10 N.J.A.R. 465 (CCC 1982), aff'd per curiam Dkt. No. A-4188-81T1 (App. Div. August 31, 1983), certif. den. 95 N.J. 211 (1983), the Commission reviewed situations in which the petitioners had been involved in circumstances in which they had paid monies to public officials in order to secure a benefit, specifically liquor licenses. In each of these instances, as the Division notes, the matters involved official bribery, equivalent in New Jersey law to N.J.S.A. 2C:27-2. That statute specifically provides that:

> 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 those crimes.

The statutory language is reflective of the policy determination made and referenced in Volume II of the Commentary to the New Jersey Penal Code, section 2C:27-2 at 265 (1971), which notes that:

> The Code does not allow a defense, as does New York, that the person did not bribe because he was extorted. We believe a person in such a situation must report the incident to the authorities rather than pay the money.

The Division argues that "the public policy with regard to commercial bribery under N.J.S.A. 2C:21-10 should be no different."

An examination of the criminal statute regarding commercial bribery demonstrates, as respondent argues, that the legislature did not see fit to include in the

commercial bribery statute the language contained in the political bribery statute which denies a defense of extortion. While as a matter of public policy it may well be appropriate to argue that one of whom a bribe is demanded must report rather than pay or face public condemnation, for the purposes of the criminal statute the legislature has not incorporated a prohibition against the assertion of a "defense of extortion." Without for the moment considering public policy considerations which may affect the question of whether licensure of one who pays under threat or coercion may be inimical, or whether such conduct affects good character, it appears that with respect to determining whether Cornell's conduct constituted commercial bribery one must consider whether the actions were the result of extortion and whether such in fact insulates Cornell against a finding of a violation of this statute.

As previously noted in the findings of fact above, I **FIND** that Mr. Cornell provided Mr. Kepner with the condominiums and the trucks because he, Cornell, believed that if he did not do so, Kepner could invoke his authority within the union to cause difficulties for Cornell's business. While I have concluded that Kepner never specifically said anything of a threatening nature to induce Cornell, there is no doubt whatsoever that Mr. Cornell would not have on his own come forward and suggested to Kepner that he was willing to provide Kepner with inducements in order to secure anything from him. Thus, the initiation, instigation, source and sole cause of Cornell's ultimate determination to provide the benefits to Kepner arose from Kepner and his request and not from any conscious, willful, desired intention on Cornell's part to benefit Kepner. It is thus fair to say that while the degree of coercion applied was extremely limited, the mental impression placed upon Cornell at the time the request was made to him was one which caused him to reasonably believe that a refusal might cause difficulties for his company.

Given the above, and the lack of any language in the commercial bribery statute denying the "extortion" defense, as opposed to the specific provision in N.J.S.A. 2C:27-2, I **CONCLUDE** that a victim of extortion does not commit a violation of N.J.S.A. 2C:21-10 if it confers a benefit even though the "acceptance of (the benefit) will be criminal under this section." The provision at 2C:21-10c which is intended to make it a crime to pay a commercial bribe only makes criminal the intentional, willful, deliberate conference of the benefit by a briber who in order to secure a benefit acts on its own to secure the benefit from the bribee without having been forced or coerced. While the distinction between the two types of offenses, official and political on the one hand versus

commercial on the other, may in fact not justify a distinction between the defenses available to the payer of the bribe, particularly where the payment is made to a union official operating under the protections of the elaborate labor-management legislation on both the state and federal level, as opposed to where the payment is between commercial interests such as by a salesman to a purchasing agent of a private corporation to induce purchases or to promote a grant of contracts, the omission of the specific prohibition against an extortion defense in the commercial bribery statute must be presumed to be a purposeful determination on the part of the legislature not to foreclose an extortion defense in the commercial bribery area. As such, I **CONCLUDE** that since Mr. Cornell made these payments under coercion, albeit of a limited, implied and indistinct nature, that he cannot be found to have violated N.J.S.A. 2C:21-10.

TAFT-HARTLEY

In addition to the allegations that Cornell's conduct constituted a violation of the state's commercial bribery statute, the Division also argues that Cornell violated 29 U.S.C. section 186(a), commonly known as the Taft-Hartley Act, although more properly the Labor Management Relations Act of 1947. That statute makes it unlawful

> (a) . . . for any employer or association of employers or any person who acts as a labor relations expert, advisor, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, or deliver, any money or other thing of value -
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce;or
>
> (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;
>
> (3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

> (4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

Respondent argues that Mr. Cornell did not violate the Act. This is so because (1) the benefits were extorted from him and as the victim of extortion he is not a target of the Act and (2) since Cornell was unaware of the provisions of the Act making it unlawful to provide the benefits, he did not commit a "willful violation" which is required under subsection 186(d) of the Act which provides:

> (d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment of not more than one year, or both.

In support of its contention that as a victim of extortion Cornell is not guilty of violating the Act, respondent points to language in the United States Supreme Court decision of Arroyo v. United States, 359 U.S. 419, 424-426 (1959), in which the Court noted that the statute was supported by members of Congress who

> were concerned with corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible abuse of union officers of the power they might achieve if welfare funds were left to their sole control. . . .

citing in footnote 8 the statement of Senator Robert Taft that the amendment to S1126, the original bill which contain no reference to payments by an employer to a representative other than which were contained in section 8(2) of the Wagner Act, that it was "intended to deal with 'extortion or a case where the union representative is shaking down the employer.'" 93 Cong Rec 4746.

The language of the Act does not contain any distinction between the payment of extortion and the payment of bribery. However, respondent believes that Arroyo supports the conclusion that an innocent and unwilling employer who pays coerced payments is not guilty of violating the Act. In discussing whether or not the statute requires "mutuality of

guilt for the conviction of either the employer or the representative of employees," the Court noted that:

> An employer might be guilty under subsection (a) if he paid money to a representative of employees even though the latter had no intention of accepting. . . . A representative might be guilty if he coerced payments from an innocent and unwilling employer. . . . Both would be guilty if the payment was ostensibly made for one of the lawful purposes specified in section 302c if both knew that such a purpose was merely a scam.

Thus, in respondent's view, the example in Arroyo concerning the innocent and unwilling employer paying indicates that such a employer does not violate the Act when it pays coerced benefits even though the acceptor/extortor would be guilty.

Once again, respondent's position is founded upon a distinction between the payment of bribes and the payment of extortion. Where an employer goes out of its way to offer or pay to union representatives benefits in order to obtain something of value from those representatives, where the payment is an unrequested inducement, or where there is active scheme between willing participants from the labor and management side, then guilt may attach to the employer. However, where the employer pays because of fear, threats, coercion, and where the solicitation has come from the employee representative, then in respondent's view, just as in connection with its position as to the New Jersey commercial bribery statute, extortion constitutes a defense to the charge.

The Division does not address the Taft-Hartley issue in any detail in its brief. It therefore does not respond to respondent's contentions concerning the legal ramifications addressed above. Presumably it would argue, as it does in connection with the New Jersey commercial bribery statute, that extortion does not constitute a defense.

While there may be many reasons why it might be appropriate to in some degree find the conduct of one who pays bribes under coercion less than completely worthy of sympathy, from the standpoint of the serious ramifications of a Taft-Hartley prosecution, I **CONCLUDE** that where the evidence establishes that the payor of the benefits has provided them under coercion and without evidence which would indicate some illicit intention that the payor may not be found guilty of a violation of 29 U.S.C. 186(a). This is so both because of the implications of the Court's analysis in Arroyo which, in excluding a

necessity for mutuality of guilt, makes it clear that an innocent and unwilling payor conferring benefits under duress need not be guilty for the coercive acceptor to be guilty and also because the statute's requirement in subsection (d) that violations of the provision be "willful" implies not only not the payment be made by one who has some knowledge of the provisions of the act and the illegality of such payments, but also that one conferring the benefits also act in accordance with its own free will as opposed to being "strong-armed" into conferring the benefits. Such conduct, where the evidence establishes that the payor was otherwise innocent and unwilling, negates the possibility of the conclusion that the payments were made "willfully." Here, based on the evidence and the conclusions which have been drawn from them, I **FIND** that Mr. Cornell conferred the benefits as a result of implied threats and coercion based upon prior knowledge and experience with Kepner, the union, and other such circumstances, that he in no way indicated any interest, desire, intention or plan to affirmatively act on his own to secure anything from the union other than through a lawful agreement properly negotiated between labor and management.

As for the "knowledge" theory, the respondent has conceded in his testimony that there was something about the demands and payments which he believed was "illegal," or as he defined such in greater explanation, something wrong or immoral, although not necessarily illegal in the sense of being a violation of some statutory provision. However, he denied any specific knowledge that the Taft-Hartley Act made such payments illegal. The Division believes that this testimony is less than candid and points to a portion of the Kepner trial transcript, P-17 in evidence, where at page 1495, line 18 Cornell was asked on direct examination by Assistant United States Attorney Fishman:

> Did you know at the time you did it, that at the time you gave those things to Mr. Kepner, that it was illegal?

Kepner's answer to this question was "Yes." Of course, the question did not address itself to whether the illegality arose from any specific statute, much less did it make any reference to the Taft-Hartley Act. Mr. Cornell in his testimony in this case has contended that his definition of illegality in connection with the answer given in the criminal trial was not necessarily an "illegality" arising only from the criminal law.

There is something which is disturbing about Mr. Cornell's apparent attempt to define his understanding of illegality, a term which normally connotes a violation of the law, with some feeling on his part that his action may have violated some moral, religious, or other standard of conduct outside the realm of statutory enactment. This in some sense seems to signify on his part a view of "illegality" arising out of some "moral" or "ethical" standards. Having considered Cornell's testimony and the totality of circumstances surrounding the case and the individual, including character evidence referred to below, I am not persuaded that Mr. Cornell was testifying falsely when he said that he was not aware of provisions of the Taft-Hartly Act which made it illegal to make the payments and provide the benefits which occurred in this case. However, at the same time, while it is certainly understandable that a businessman may have only passing reference to the exact terms and conditions of any particular statute, even one as important to the labor relations area as Taft-Hartley, at the same time I have little doubt that Mr. Cornell must have had some inkling, or if he did not, he certainly should have, that what he was doing not only violated something in the nature of morals or ethics, but also violated laws as well. However, although I believe that such a question must have been somewhere in his mind, I **CONCLUDE** that (1) he did not actually lie in his testimony in either the criminal or the administrative hearing and (2) that whatever possible question may have been in his mind as to the exact nature of what was wrong with making the payments, he was not sufficiently aware of the terms of the Taft-Hartley Act to subject him to a finding that he was willfully violating it, as required by the statute. I **CONCLUDE** that while he may have had some arguable knowledge that such payments were improper, even if he had no specific knowledge of the provisions of Taft-Hartley which related to illegal payments (as opposed to some thought it dealt with wages and hours), his actions in conferring the benefits cannot be classified as willful.

FASIFYING OR TAMPERING WITH RECORDS - N.J.S.A. 2C:21-4(a)

In addition to the alleged violation of the commercial bribery statute and the Taft-Hartley Act, the Division contends that the inclusion of the condominium expenses paid on behalf of Kepner as business expenses reported as such on Cornell and Company's income tax returns constitutes a violation of N.J.S.A. 2C:21-4(a), the offense known as "Falsifying or tampering with records." That provision reads:

> a. Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

Although the Division's brief does not exactly spell out its theory, it appears that it relies on the portion of the above which makes it criminal to utter a writing containing a full statement. Thus, if the income tax returns contained false information as to the legitimate business expenses incurred by Cornell and Company, the utterance of the return to the federal government, for the purpose of increasing the deductions against income and therefore presumably decreasing income tax liability to the detriment of the United States, would constitute the offense.

Respondent again relies on the characterization of the payments made by Mr. Cornell as the result of extortion by Kepner in defending against the allegation that any utterance of false documents occurred. Since presumably the Division's position is that the income tax returns were false due to the inclusion of the improper expenses, the respondent points to case law which appears to hold that there is no violation of federal tax law where such expenses arose out of the result of extortionate conduct. In United States v. Hawryluk, 658 F. Supp. 112 (A. D. Pa. 1987), the defendant was charged with tax evasion in violation of 26 U.S.C. 7201 and making and subscribing false income tax returns, 26 U.S.C. 7206(1). The Court, ruling on certain discovery motions challenging the sufficiency of the government's responses to discovery requests, determined that, with respect to the allegations that various payments made to the Roofers Union were illegally included as business expenses on tax returns, where the monies were paid as a result of extortion no violation occurred by their inclusion as business expenses. The Court noted:

> Section 162(a) allows taxpayers to deduct in the calculation of income "all ordinary and necessary expenses paid or incurred during the taxable year in carrying on trade or business." Certain categories of payments, however, are excluded from deductible business expenses. Illegal payments to government officials are not deductible. 26 U.S.C. 162(c)(1). In addition, section 162(c)(2) provides as follows: Other illegal payments - no deduction shall be allowed under subsection (a) for any payment . . . made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a state . . ., which subjects the payor to a criminal

> penalty or the loss of license or privilege to engage in a trade or business. [emphasis supplied]

(Emphasis in the original.)

The Court's opinion continues by examining the Hobbs Act, 18 U.S.C. 1951, which makes extortion to obstruct, delay or affect interstate commerce, a crime against the United States. The Court then considers the Pennsylvania statute which governs extortion, 18 P.S.A. 3923. Noting that "(N)othing in either statute indicates that the payor would be subjected to criminal penalty or loss of a business license" and that "(B)oth statutes claim the invision that the victim of the extortion scheme will not be subject to criminal sanction therefore," the Court concludes that:

> Fundamentally, there is a difference in principal between the legal payments listed in section 162(c)(2), and the payment of extortion. Voluntary, willful payments intended to influence a decision of a public official or some other individual or to reward an individual for the performance of an official duty demonstrated criminal intent which is absent when payments are coerced by the recipient. (Citations omitted.) If the payments allegedly made were ordinary and necessary expenses of doing business, see, Raymond Bertolini Trucking Co., supra, and not illegal to the payor, 26 U.S.C. 162(c)(2), then payments would be deductible to the taxpayer. As such, they could offset certain taxes the government asserted the taxpayer owned, and to also be relevant to the issue of intent.

In the present case, I have concluded that Mr. Cornell and his company provided benefits to Kepner as a rsult of his extortionate conduct and not out of any willful desire, intent or plan on the part of Cornell. As such, the payments were, although certainly voluntary in the physical sense, not voluntary and willful in intent. I have concluded that the conference of these benefits under these circumstances did not constitute a violation of either the New Jersey commercial bribery statute or the federal Taft-Hartley Act. Therefore, payments made under these circumstances were not such as to subject Cornell, as the payor, to a criminal penalty, nor is the business threatened with the loss of license or privilege to engage in its chosen field of endeavor. While it is true that there is a potential that it might, in the context of this proceeding, lose its privilege to engage in casino-related business, the language of 162(c)(2), which provides that a deduction will not be allowed where the payments subject the payor to the loss of license or privilege to

engage in a trader business, does not appear to directly address the type of loss which might occur in this proceeding.

The deduction by Cornell and Company of the expenses incurred on behalf of Kepner does not appear to constitute a form of tax evasion or the filing of a false tax return. Although Cornell himself seemed uncertain as to whether the expenses were in fact deducted, and testified in the federal trial of Kepner that they were, I **FIND** no reason to doubt that they in fact were included. No evidence has been provided by the respondents which would clarify the situation to indicate that they were not included in the federal return. Although it is true that the burden of establishing violations of the law is upon the Division, since the petitioner's own evidence indicates that Cornell believes he instructed someone in his accounting office that the expenses were being incurred for some unidentified project, there is every reason to infer that these expenses were in fact included as legitimate business expenses of the company. If that was not the case, the evidence supporting the conclusion of non-inclusion would seem to lie in the hands of the respondent. It has produced no such evidence and therefore a reasonable inference allows the conclusion that the expenses were in fact included and reported.

The falsifying and tampering statute, N.J.S.A. 2C:21-4, provides that a violation occurs when a writing is uttered "knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing." In this circumstance, I **FIND** no basis for concluding that there is anything false about the tax return, given the fact that the expenditures were in fact incurred, that they were incurred because of the pressure of extortion and the implications which nonpayment carried with respect to the ability to conduct the normal course of business and because it apparently is not a violation of federal tax law to include these expenses when they were paid as a result of extortion. There is nothing false about the expenses or their inclusion in the tax return. As to whether or not their inclusion as legitimate business expenses was meant to conceal any wrongdoing, I **FIND** that there was no intent on the part of Cornell specifically to cover up his payments by including them as legitimate business expenses. Finally, given the fact that the payments were extorted from Cornell and his company, their payment was not violative of criminal law and therefore not "wrongdoing," at least in a penal sense.

For the reasons expressed, I **CONCLUDE** that neither Mr. Cornell nor Cornell and Company violated N.J.S.A. 2C:21-4.

CONSPIRACY AND RACKETEERING ALLEGATIONS

Although the Division asserts in passing in its brief that the conduct of respondents constituted violations of N.J.S.A. 2C:41-2(c), racketeering; N.J.S.A. 2C:41-2(d), conspiracy to engage in racketeering; N.J.S.A. 2C:5-2, conspiracy; 18 U.S.C. 1962(c), racketeering under the federal statutes; 18 U.S.C. 1962(d), Conspiracy to Engage in Racketeering; and 18 U.S.C. Section 371, Conspiracy, it presents no argument as to the proofs which would sustain these charges. Without detailing the statutory provisions in the body of this decision, it is sufficient to note that each of these offenses requires some predicate offense upon which the conspiracy or racketeering charges are founded. In view of the findings that the benefits were extorted and that neither Cornell nor his companies violated any of the alleged predicate statutes, that is, N.J.S.A. 2C:21-4(a); the Taft-Hartley Act, or the commercial conspiracy statute, there is no proof of any predicate offense and therefore the charges under these conditional statutes cannot be sustained.

N.J.S.A. 5:12-86(c)2 - INIMICALITY

N.J.S.A. 5:12-86c(2) provides for disqualification of a casino license to any applicant where the evidence establishes the commission of

> Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; . . . .

Based upon the findings and conclusions stated above, I have determined that none of the activities engaged in by Charles Cornell personally or on behalf of his companies constituted a violation of any state or federal criminal statute. Therefore, there is no evidence that an "offense" has been committed under New Jersey or federal law which could be the basis for a conclusion that licensure of the respondents would be inimical to the policy of the Casino Control Act for casino operations. Of course, this conclusion does not address whether, in the entirety of circumstances, it is appropriate for the Commission to allow Cornell and/or the entities to carry on business in the casino area. The finding is limited to the statutory provision which requires proof of an "offense."

GOOD CHARACTER, HONESTY AND INTEGRITY

The respondents seek licensure as casino service industries. N.J.S.A. 5:12-92 provides for such licensing. Subsection a. thereof deals with the licensing and registration of casino service industries "offering goods or services which directly relate to casino or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming. . . ." Subsection a(2) deals with licensure of "any casino service industry intending to manufacture, sell, distribute or repair slot machines within New Jersey. . . ." 92b provides licensing criteria for casino service industries governed by subsection a, as well as "owners, management and supervisory personnel and other principal employees . . ." who must qualify under the criteria established for qualification of a casino key employee, N.J.S.A. 5:12-89.

Subsection 92c deals with licensure of "All casino service industries not included in subsection a. of this section, business such as "suppliers of alcoholic beverages, food and non-alcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotel; limosine services and construction companies contracting with casino applicants or licensees or their employees or agents." Subsection 92d provides:

> Licensure pursuant to subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with criteria contained in subsection 86 of this act.

Section 86, which deals generally with casino licensing, provides that licensure may be denied for violation of enumerated qualifying offenses or on the basis of inimicality, current prosecution or current charges, the pursuit by an applicant or any person required to be licensed of economic gain in an occupational manner or context which is a violation of the criminal or civil public policies of the state, the identification of an applicant as a career offender or member of a career offender cartel or associate of a career offender or career offender cartel, or the commission of any nonprosecuted act which would constitute an offense under subsection 86c, as well as contumacious defiance of investigatory bodies of the state of the United States. There is no reference in section 86 to a requirement that an applicant establish good character, honest and integrity in order to be licensed. There is such a reference in section 89b(2), which deals with casino key employee licensing and which is relevant to the licensure of a casino service industry

under section 92b, those industries which are included in 92a as industries directly relating to casino or gaming activity.

Respondent notes that there is no reference in the statute to any requirement for licensure of c. section casino service industries in accordance with a good character, honesty and integrity requirement, such as is specifically contained in 89b(2) incorporated in the licensing requirement for casino service industries under subsection b. It posits that the Division "may argue that respondents have a burden of establishing their reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c)." That regulation, which is a part of a chapter entitled "Casino Service Industries," provides standards for qualification. It states:

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

Respondent contends that the good character, honesty and integrity requirement of N.J.A.C. 19:43-1.3(c) is ultra vires the Act and therefore invalid. It believes that it imposes a burden of proving good character on non-gaming service providers which was not intended by the legislature. It asserts that those casino service industries seeking licensure under subsection c. "who do not provide goods or services which directly relate to gaming, need not establish the same qualifications as a casino key employee." Without endeavoring to determine whether this may be true with respect to every requirement for licensure under the casino key employee standards, it is sufficient to note that the legislature did provide in N.J.S.A. 5:12-92c that licensure of casino service industries not included in subsection a. "shall be licensed in accordance with rules of the Commission prior to commencement or continuation of any business. . . ." Thus, the legislature left it to the Commission to determine the specific qualification criteria for c. section casino service industries while also providing in subsection d. that a violation of any of the criteria in section 86 would constitute a discretionary bases for denial ("may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act.") The listing of the section 86 criteria as a permissible basis for denial was not intended as an exclusive limitation on the Commission's ability to establish additional

qualifying criteria. The Commission has done so in N.J.A.C. 19:43-1 et seq., most specifically as to this sort of industry in N.J.A.C. 19:43-1.3c. Thus, I **FIND** that good character, honesty and integrity is a requirement which must be established as an affirmative obligation of any c. section applicant and that the requirement must be met by the applicant as well as its principal.

EVIDENCE AS TO GOOD CHARACTER

The evidence as to good character, honesty and integrity arises essentially from two sources. The first of these is the substantial, impressive and multi-faceted good character evidence presented by numerous witnesses who testified on behalf of Charles Cornell and his companies. These individuals, ranging from a former governor of the State of New Jersey to officials within the Cornell business, employees of the business, companies for which Cornell does steel erection work, business rivals, union officials, police officials, clergy, all came in support of Mr. Cornell's own testimony concerning his own public involvement, that of his father before him, of substantial public and charitable activities which he and his company have engaged in, often in an anonymous fashion. Suffice it to say that this testimony was extremely impressive, clearly sincere and that there is no question but that Charles Cornell is, has been and no doubt will be in the future by and large an outstanding individual of charitable bent, a well-respected businessman running an extremely highly respected business enterprise, a man who is trusted by his business associates, employees and rivals and one whose company stands in the first rank of similar businesses in the state of New Jersey, the East Coast and no doubt the United States.

The second source of evidence as to character is of a more limited and yet extremely significant nature. The evidence in this case which has established Charles Cornell's course of conduct from 1979 to 1983 and then in the years beyond through and including the time when he testified on behalf of the United States against Thomas Kepner is evidence which is relevant to a determination of whether Kepner's character in the course of his business activities raises questions as to whether he should be licensed. That evidence, which demonstrates that Mr. Cornell and his company supplied benefits to Thomas Kepner under the cloud of a threat which results in a conclusion that the payments were the result of extortion, nevertheless establishes that from the time that Kepner asked/demanded that Cornell provide him with a love nest in 1979 through and

until 1986 when Cornell became aware that the federal government had connected him to Kepner's activities, Cornell never made any attempt whatsoever, in any fashion whatsoever, to bring to the attention of any public authorities the fact that he and his company were being forced to provide Mr. Kepner with benefits which he knew, by his own admission, were not proper and were wrong, nor did his attempt determine whether the provision of such benefits was an illegal act. Cornell never contacted any attorney, any law enforcement official, any labor official, any representative of the National Labor Relations Board, or anyone else to see whether there was something that could be done either to prevent Mr. Kepner from continuing to extort the benefits or, possibly, to call to their attention some possible illegal activity. It was as a result of Cornell's silence over the years that Mr. Kepner's activities, at least as to Cornell's company and perhaps as to others, went undetected by law enforcement authorities from at least 1979 to 1986. Moreover, although speculation is not normally appropriate in matters of this nature, there is strong reason to believe that had Kepner's activities not been uncovered by the Strike Force in 1986, Cornell would never have called Kepner's activities to anyone's attention. Thus, in determining whether or not Cornell has the requisite good character, honesty and integrity for licensure, one must look beyond whether his conduct during 1979-1983 constituted a criminal offense and see whether it constitutes a mark against his good character, honesty and integrity outside the parameters of criminality.

In assessing whether Cornell and Charles Cornell should be licensed, there is a stark reality which must be considered. The Casino Control Act was established by the legislature as a means of providing legalized casino gambling in New Jersey in an atmosphere where that industry could

> . . . attain, maintain and retain integrity, public confidence and trust, and remain compatible with the public interest . . . under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations, and the exclusion or removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto.

In addition, the Act was written so as to provide a basis for engendering "public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." In furtherance of this goal

> . . . 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. . . .

The extremely broad scope of regulation which was provided for in the legislation clearly signaled an intention on the part of the state legislature to do everything reasonably possible within the confines of constitutional government to keep the casino industry, the service industries involved with it, the persons employed in the industry as free from taint, as clear of question marks, as unsullied, as possible. In the years that have followed, there have been clear indications that among other areas of difficulty in attaining and maintaining this atmosphere has been the infiltration of organized crime elements and illegal union activities into the sphere of the casino world. Thus, the recent past has witnessed the Local 54 investigation and prosecutions, the Kepner prosecution, and other activities designed to root out illegal union practices and corrupt union officials. The present case presents a situation where the service industry seeking licensure was the target, and one may say to an extent the victim, of such illegal activities by such a corrupt union official, in the particular atmosphere and on the particular sites which the Casino Control Act was intended to directly affect, that is, in the construction sites of the very casinos themselves. Thus, as opposed to certain other instances where entities, individuals or service industries have sought licensure and been challenged because of alleged bribery in circumstances which arose in other juristictions and other contexts, here the facts of this case relate directly to conduct of business by Cornell and Cornell and Company in Atlantic City in connection with the casino industry. Given this context, the failure of Mr. Cornell to do anything at all between 1979 and 1986 other than to pay benefits to Kepner for four years and then stop on his own without advising anyone of what was occurring becomes all the more troubling, for by doing so he fostered the very corrupt practices which the Act was intended to prevent, he nurtured the very corrupt official the Act was aimed at. Although the finding in this case is that he did so under an implied threat, one must look at the entire context and the circumstances of that implied threat to see whether or not they say anything about Cornell's character which is significant with respect to whether to permit he and his

company to be licensed. Thus, in assessing the good character, honesty and integrity issue, it is necessary to weigh the massive and impressive showing of good character, honesty and integrity presented by the applicant against the circumstances which resulted from Kepner's demands and Cornell's responses thereto.

A similar case arose before the Commission and coincidently before this administrative law judge in 1985. New Jersey State News Company, Inc. v. State of New Jersey, Division of Gaming Enforcement, CCC 5569-84, Final Decision, August 6, 1985, involved a company which sought licensure as a casino service industry pursuant to N.J.S.A. 5:12-92c. The company's president and principal stockholder, Robert B. Cohen, owner of 98.5 percent of the outstanding stock of the parent corporation, Hudson County News Company, and 100 percent of the stock of New Jersey State News, had been convicted of a violation of the Taft-Hartley Act in the United States District Court for the Southern District of New York on June 30, 1981. The initial decision, issued by this judge on January 11, 1985, recites the facts concerning that conviction. Mr. Cohen was an individual who, much like Mr. Cornell, was the owner of a highly successful, highly respect corporation with a significant position in its industry. Cohen was also an extremely charitable individual whose character was attested to quite strongly. However, according to the evidence, Cohen entered into the business sometime before 1973 and became involved in the financial end of the business when his father died in 1973. At that time he learned that for some time his company, as well as at least 14 other companies in the newspaper and magazine delivery business in New York and New Jersey, had been paying monies to one Douglass LaChance, President of the Newspaper and Mail-Deliver's Union, which was the union which represented the truck drivers employed by the various companies. The information returned against Mr. Cohen alleged payments between May 1976 and July 1979, totaling $9,900, although the actual amount of payments was much higher.

According to a stipulation of facts entered in the case, various company officials who were involved in making the illegal payments for the various companies which were paying LaChance were either prosecuted or were granted immunity from prosecution. The stipulation further revealed that at the trial the government had argued that LaChance's actions within the newspaper and magazine distribution industry involved his ability to apply substantial pressure to the distributors' operations because the distributors

had arrangements with publishers which did not involve written contracts and which could be terminated at any time. As such LaChance, much as Kepner in the present case, was in a position to use his influence within the union to slow up, impede and disturb the business of the companies with which his union had contracts and posed a "substantial threat to the business relationship between the wholesalers and the distributors and threaten(s) the wholesalers with loss of business." Mr. Cohen testified that he made illegal payments from 1973 until he began cooperating with the government in 1979 and that the reason for the payments was "we basically wanted to keep our business." He stated that "I think I got the message at that point that you either made the payments or you were out of the business and going to the U.S. Attorney just simply never occurred to me."

Mr. Cohen's testimony at trial, which was undisputed, was that when he learned that the federal government was investigating the distribution business, he received a request to come and speak with the U.S. Attorney. He consulted with his counsel, went to the U.S. Attorney's Office, offered to give them all the information he had, provided records when they were subpoenaed and told the truth during his interview with the federal attorneys. He was not called to testify at the trial. He received no promises or consideration in connection with his plea of guilty. Mr. Cohen was sentenced by United States District Judge Charles L. Brieant, Jr., to a one-year prison sentence on each of 20 counts of the information, the sentences to run concurrently with each other and to be suspended. He was placed on probation for a period of three years and fined $150,000.

The similarity between Mr. Cohen and his company's position vis-a-vis Mr. LaChance and his union and Mr. Cornell and his company's position vis-a-vis Mr. Kepner and his union is quite striking. In each case a highly respected businessman, running a very successful business, faced with what he perceived as the threat of interference with his business which could be ruinous, a threat coming from a union official with the power and authority to invoke largely illegal tactics against the company in order to impede its business, determined that the threat implied by the demand for provision of benefits necessitated that the payments be rendered to the corrupt union official so that business could proceed in a "normal" course without interference or threat. In each case the businessman made the paymments or provided the services without contacting any law enforcement authorities or calling to the attention of any governmental agency such as the National Labor Relations Board that he and his company were being asked to provide

anything to a union official beyond that provided for in contractual arrangements. In each instance, the payments continued for some years. In each instance, the government learned of potential corruption by the union official independent of any assistance from the businessman. In each instance the government came to the businessman and sought his assistance. In each instance the business cooperated, provided testimony and/or documents. The only significant difference between Mr. Cornell and Mr. Cohen and their involvement in these quite similar circumstances was that Mr. Cohen, for reasons not part of the record, was charged in an information and pled guilty to making the illegal payments in violation of Taft-Hartley, whereas Mr. Cornell was not so prosecuted and therefore not charged with violating Taft-Hartley. There is no record in the New Jersey State News decision as to the reason why the government chose in that instance to force Mr. Cohen to face criminal charges nor is there any reason, other than an assumption that cooperation was deemed sufficient and the circumstances not deemed to be such that the government chose to push criminal charges against Mr. Cornell. In neither case is there any indication that either Mr. Cornell and Mr. Cohen wished to make payments, sought out the union official, or in any way indicated that they were willing, anxious or even considering bribing their unions. In both cases, there is every reason to believe that the payments resulted from the extortion of the union official and the threats, implied or stated, which brought home to the businessmen the possibility of actions being taken adverse to their business interests.

In the New Jersey State News matter, the administrative law judge determined that Cohen, and New Jersey State News of which is was the sole owner and qualifier, could not qualify for licensure as licensure would be inimical to the polices of the Casino Control Act. I determined that:

> Given the nature of Mr. Cohen's actions, the question which must be answered is whether, as in Merchants', someone who has a history of having committed serious violations of law, indeed criminal violations, can be trusted with a casino service industry license, under the provisions of this statute. I **CONCLUDE** that New Jersey News cannot.

Obviously, in the present case Mr. Cornell does not bear the taint of a criminal conviction. The question is, in view of the necessity of his demonstrating that he has the requisite good character, honesty and integrity for licensure, whether that difference is significant or whether, when looking at the underlying circumstances, his conduct calls

into question his good character, honesty and integrity despite the lack of a criminal conviction.

> Proofs may nontheless be considered as to whether the applicant has established by clear and convincing evidence the . . . affirmative qualification criteria . . . .

In re Resorts Casino Application, 10 N.J.A.R. 244, 252 (1978).

> (T)he right to disqualify an applicant for the lack of good moral character would allow disqualification for immoral acts that do not constitute a crime for technical reasons.

In re Playboy-Elsinore Associates, Dkt. No. A-4188-81T1 at 13 (App. Div. 1983) (unpublished per curiam) certif. den. 95 N.J. 211 (1983).

In New Jersey State News, I stated:

> The significant reason for the conclusion that this company cannot be licensed is that Cohen's crime, paying off union officials to buy labor peace, is one which played right into the hands of crooked union officers and unions dominated by such individuals. Without the cooperation of the payor, the payee of bribes goes unpaid. Although it is quite true that there is an element of risk in refusing to pay, as Judge Brieant pointed out, there are alternatives to paying which society must insist that individuals take in order to prevent the illegalities from continuing.
>
> This case cannot be decided without some reference to the Casino Control Commission's well publicized efforts to prevent the infiltration of the casino industry by criminal elements, be they of the organized crime variety or be they crooked officials. The attempts by the Commission to purge the leadership of Local 54 have been well publicized and heavily litigated, all the way to the United States Supreme Court. It is quite obvious that the Commission, in fulfilling its mandate, views the potential for labor racketeering as a major threat to the industry. To grant a license to a company whose principle qualifier and owner has, within only a few years, been convicted of making illegal payments to labor racketeers in support of their nefarious schemes seems incongruous with the Commission's attempts to avoid permitting labor racketeering to flourish in the casino industry and in its related areas.
>
> While it is well recognized that the wholesale newspaper and magazine distribution industries are very time-sensitive and

> that it would have been extremely easy for the unions to have damaged, if not destroyed, the business of this or any other company by merely slowing down the process, the fact that the consequences of the failure to pay might have been severe does not excuse the payments in any way. As Judge Brieant pointed out during the sentencing of Mr. Cohen, neither Cohen, nor apparently any of the other wholesalers, had the courage, guts, wisdom, or whatever one chooses to call it, to alert the authorities to the existence of the pressures, demands and threats of the union and bring such tactics to a halt by the intervention of federal or state authorities. This scheme, by which union officials were able to extort money from the wholesalers, lasted for many years. For at least six of these, Mr. Cohen was aware of the problem and did nothing to stop it, but instead chose to pay. The violations engaged in by Cohen were extremely serious and the penalties imposed by the United States District Court reflect that fact.

As another federal judge noted in United States v. Kahn and Teleprompter Corporation, 472 F. 2b 272 (2nd Cir. 1973):

> The proper response to coercion by corrupt public officials should be to go to the authorities, not to make the payoff. Kahn, supra, at 278.

Given the above, the question is whether the fact that Charles Cornell was not indicted or convicted and does not bear the stigma of criminality is a sufficient basis for this case resulting in a different outcome from that reached in New Jersey State News. In addition, of course, in view of the findings above, the fact that I have concluded that Mr. Cornell did not violate the Taft-Hartley Act or the state commercial bribery statute indicates that at least in this judge's opinion he did not commit any crime. In fact, it may well be that had Mr. Cohen sought to go to trial on the Taft-Hartley allegations against him that he might have prevailed by establishing an extortion defense and might have escaped a criminal conviction as well. For whatever reason, he did not go to trial, but instead pled guilty. Should all of this make a difference in the outcome?

Having considered all of the facts and the similarities and differences between New Jersey State News and the present case, I am unconvinced that Mr. Cornell's responsibility for his actions and those of his company should be viewed any differently then Mr. Cohen's. In each case the businessman, in the interest of preserving his business, and despite the fact that in each case there was at least some indication that the businessman knew, or certainly should have known, that providing benefits to the corrupt

union official was wrong, made the payments anyway and never told the federal authorities or anyone else until the federal authorities came to them with information linking him to the payments. In each case cooperation from the businessman only came after they had already been linked to the payoffs. In each case the businessman, for reasons of business only, turned his head away from the wrong and let the practice continue. Although it is true that ultimately Mr. Cornell broke off the payments on his own he still never went to the authorities and still therefore permitted a situation to continue in which Kepner, if he was not extorting money any longer from Cornell's company, was free to proceed to do the same both to his own employees and to other companies because the authorities were not alerted to his activities by Cornell. In each instance, the action of the businessman aided the corrupt union official in his nefarious schemes and prevented early government involvement to stop the corruption. I see little real difference between Cornell and Cohen. I do not see the existence of the criminal conviction of Cohen and the lack of such as to Cornell as a significant difference between the two as far as the underlying conduct is concerned and its affect upon their good character, honesty and integrity in the particular business situation involved.

Despite the lack of a criminal conviction, I **CONCLUDE** that Charles Cornell's conduct in connection with the Kepner situation is such as to call into serious question his good character, honesty and integrity as those traits are related to his ability to carry on his business in a highly regulated and pressurized atmosphere such as the casino industry.[1]

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[1]Questions concerning Mr. Cornell's testimonial candor, raised in the Division's brief, have been dealt with in part in the discussion of the Taft-Hartley Act at pages 27-28. As to that area of testimony from the administrative and federal criminal trials, as well as any other implications or arguments that Cornell did not testify truthfully, I **CONCLUDE** that there is no showing with respect to these matters which would significantly detract from Cornell's demonstration of his good character, honesty and integrity. In the absence of the problem discussed above concerning the role of Cornell as payor and his failure to take other action, nothing concerning his alleged lack of candor would be sufficient to reduce his showing of good character, honesty and integrity below the necessary clear and convincing level.

SUMMARY AND CONCLUSION

Once again, the Casino Control Commission is called upon to deal with an application for licensure by an entity and an individual who have made illegal payments to corrupt officials. While the payments involved may not have been strictly illegal from the standpoint of the payor, they clearly were illegal from the standpoint of the payee. As expressed above, the Commission is again faced with a determination of whether it is proper, in the context of a highly regulated industry subject to substantial threat of corruption, to permit a payor, a "victim of extortion," to participate in casino-related activities. As in New Jersey News the applicant, except for this circumstance, would be otherwise without question a valuable asset, a shining example, a highly worthy recipient of the state's imprimateur. However, as noted above, the payment by Cornell and his company of benefits to Thomas Kepner without doing anything to in any way seek advice, raise questions, or bring to the attention of any authorities what Kepner was doing, as a means of assuring that the ongoing buisness activities of the company would not be disturbed by Mr. Kepner and his union, raises serious questions as to the business side of Mr. Cornell's good character, honesty and integrity as that is related to the ability of this company to perform in a proper fashion within a highly-regulated industry which seeks, with the wholehearted support, in fact one might say the prodding of the state, to avoid as much as possible any stain of corruption, any public perception that those in any way aiding, abetting, permitting, allowing or nurturing corruption will receive any "reward" from the regulators.

In closing remarks in his brief, counsel for respondent argues that everyone makes mistakes, strong people admit them and take "steps to remedy the wrongs and insure they are not repeated." He contends that Charles Cornell was such a strong person and showed this by ending his relationship with Kepner and cooperating with the government during Kepner's prosecution. He further argues that denial of a casino service industry license to Cornell would send "the wrong message" to the construction industry in Atlantic City.

Understanding counsel's position, I must beg to differ with it. The message which has quite rightly been suggested in connection with matters of this nature, by both the Commission, by federal judges such as Briant, by others dealing with this problem, is that first and foremost individuals and companies which are pressed to pay monies or

provide benefits to corrupt public or union officials must take it upon themselves in the first instance to take action to stop the extortionate conduct at its start. If all persons put upon by such corrupt authorities would immediately call the activities of these persons to the attention of proper authorities, seek advice as whether what was being demanded was proper, etc., much corruption would never occur. The messeage, if one is to be delivered to the construction industry and to that matter to all others in the Atlantic City area, is that corruption must be stopped initially and immediately. To characterize Mr. Cornell as the "strong person" overlooks the fact that while he did eventually stop providing the benefits (albeit after approximately three and one-half years), he then remained silent, doing nothing to stop Kepner from continuing to act in such a corrupt fashion as to others, only "cooperating" and only providing information when the government, through circumstances unrelated to any action of Cornell, came upon his involvement and came to him to confront him with what they had discovered. While there is no question but that Mr. Cornell's actions thereafter were extremely significant in terms of bring Kepner to ultimate justice, and while he is to be applauded for such efforts, that show of appreciation need not go so far as to include a casino service industry license. While I do not wish for the moment to in the slightest way deprecate the risks that anyone who seeks to expose corruption exposes him/herself to, government, its law enforcement agencies and regulatory bodies, and society in general must demand such risks be taken. While it may not be criminal not to take the risks, and while one can certainly sympathize with the desire of some persons to merely let the matter pass, make the payments, and be quiet, ultimately such conduct cannot be a basis upon which rewards are given.

For the reasons expressed, and with a good deal of reluctance as there is no doubt that other than for this matter Mr. Cornell would be a highly prized participant in the industry, I am compelled to conclude that he has failed to establish by clear and convincing evidence that he and his company have the requisite good character, honesty and integrity for licensure under the terms of the Casino Control Act. Therefore, the casino service industry license application must be denied, and the application to revoke must be granted. It is so **ORDERED.**

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

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

DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE JUL 10 1989

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

On behalf of petitioner:

P-1 For identification only — Swimming Pool Registration

P-1b For identification only — Car List

P-2 Lease Agreement, dated December 7, 1979

P-3 Lease Agreement, dated November 26, 1980

P-4 Report of June 4, 1987, from Special Agents Chance and Godfrey

P-5 Photocopy of Cornell and Company, Inc., Check 90255 and Manual Payment Form

P-6 (P-13 in evidence) Checks, dated January 25, 1980 through September 16, 1981

P-7 Indictment, United States of America v. Thomas F. Kepner, et al.

P-8 Motor Vehicle Registration 1103863 and Car Invoice from Mall Chevolet, Inc., N903; S.A. Lindstrom Company Check 16240 and Certificate of Ownership of a Motor Vehicle, Control No. 1267509

P-9 Kardon Chevolet Documents; Assignment of Certificate of Ownership; Cash Receipt 18381; sheet bearing vehicle description; New Jersey Title; Kardon Auto Mall Work Sheet; Certificate of Origin of a vehicle; Bill Pines Fine Cars, Inc., vehicle description; Kardon Chevolet, Supplemental Sales Agreement; Certificate of Ownership of a Motor Vehicle No. 351950; New Jersey Division of Motor Vehicles File Record Certificate of Ownership

P-10 Letter of January 27, 1988 from Paul J. Fishman, Assistant U.S. Attorney

P-11 Disbursement/Check Registers

P-12 Payment Distribution Lists and Final Check Registers

P-13 Canceled checks

P-13a & b Front and back of check for $450, dated September 26, 1980

P-14 United States Corporate Tax Returns

P-15 Project List

P-16 Order and Judgment and Probation Commitment Order in the United States of America v. Thomas F. Kepner

P-17 Transcript of testimony of Thomas Kepner of May 3, 1988, pp. 1414-1602

P-18 Transcript of Kepner testimony of May 4, 1988, pp. 1603-1677

On behalf of respondent:

R-1 Letter of July 18, 1988, from Paul J. Fishman, Assistant U.S. Attorney
R-2 Affidavit of Governor William T. Cahill, dated July 15, 1988
R-3 Letter of February 8, 1989
R-4 Affidavit of Rowley
R-5 Affidavit of Ralph Cornell
R-6 Affidavit of Rauscher
R-7 Affidavit of Haggerty
R-8 Affidavit of Woodbury Chief of Police
R-9 Affidavit of Moylan
R-10 Affidavit of Marolt
R-11 Affidavit of Housman
R-12 Equipment and Labor Donations List
R-13 1988 Major Charitable Contributions
R-14 1987 Major Charitable Contributions
R-15 Affidavit of Jones

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-398; 89-CSI-5
VENDOR NO. 11023
APP. DIV. DOCKET NO. A-1382-89T5

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

Complainant,

v.

CHARLES CORNELL, CORNELL & COMPANY, INC., CORNELL LIFTING SERVICES, AND CORNELL CRANE & HOIST, INC.

Respondents.

AND

APPLICATION OF CORNELL & COMPANY, INC., FOR A CASINO SERVICE INDUSTRY LICENSE

OPINION

Joseph H. Kenney, Esq., appeared on behalf of Cornell & Company, Inc.

Mitchell Schwefel, Assistant Attorney General, appeared on behalf of the Division of Gaming Enforcement

INTRODUCTION

These consolidated matters involve a complaint filed by the Division of Gaming Enforcement (Division) which essentially sought the termination of business between casino licensees and Cornell & Company, Inc., Cornell Lifting Services and Cornell Crane & Hoist, Inc., pursuant to section 104(b) of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., and an application of Cornell & Company, Inc., (applicant) for a casino service industry license

pursuant to section 92 of the Act.[1] Both cases stem from undisputed payments, between 1979 and 1983, in the form of condominium rent and two automobiles, from Charles Cornell (Cornell), the principal qualifier of the aforementioned enterprises, to a labor union official named Thomas Kepner. The Division argued that, in rendering such payments, Cornell engaged in conduct constituting the following criminal offenses: commercial bribery, in violation of N.J.S.A. 2C:21-10; unlawful labor practices, in violation of the Taft-Hartley Act, 29 U.S.C.A. 186(a); falsifying records, in violation of N.J.S.A. 2C:21-4(a); racketeering, in violation of N.J.S.A. 2C:41-2(c); and conspiracy to commit racketeering, in violation of N.J.S.A. 2C:5-2 and 2C:41-2(d). The Division contended that these alleged violations disqualified Cornell, the applicant and the related Cornell companies pursuant to N.J.S.A. 5:12-86(c)(1), (2) and (g).

On July 7, 1989, Administrative Law Judge (ALJ) Jeff S. Masin filed an initial decision with the Casino Control Commission (Commission) recommending the denial of the license application on the grounds that Cornell failed to establish that he and his company have the requisite good character, honesty and integrity for licensure. The ALJ

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1. Throughout this opinion provisions of the Act may be cited by section number only, omitting the prefix "N.J.S.A. 5:12-."

concluded that Cornell did not commit any of the offenses alleged in the complaint, accepting Cornell's assertion that he was the victim of extortion by Kepner.

By order dated November 3, 1989, the Commission modified the initial decision to find the applicant disqualified pursuant to sections 86(c)(1), (2) and (g) by reason of Cornell's engagement in commercial bribery and unlawful labor practices, and affirmed the ALJ's finding that Cornell failed to establish good character, honesty and integrity. Accordingly, the Commission denied the application for licensure and entered a prohibitory order against further business between the applicant and casino licensees and casino license applicants, including a termination of any existing agreements within fifteen days.

PROCEDURAL HISTORY

On June 21, 1988, the Division filed a complaint with the Commission against respondents Cornell, the applicant, and Cornell Lifting Services, seeking revocation and immediate suspension of the registration of the two enterprises and the entry of an order prohibiting the respondents from transacting any business with casino licensees and applicants. On July 11, 1988, Cornell Crane & Hoist, Inc., was added as a respondent.

On July 28, 1988, the Commission denied the Division's request for a temporary prohibitory order, but ordered the applicant to file an application for a casino service

industry license.[2] Thereafter, on August 11, 1988, the applicant filed its application. The matters were transmitted to the Office of Administrative Law (OAL) as contested cases. On January 17, 1989, the matters were consolidated. The OAL hearing was conducted on March 21-23, 1989. On July 7, 1989, the ALJ recommended that the license application be denied for the reasons stated in an initial decision, a copy of which is appended hereto as A-1 through A-48 and incorporated herein as if set forth in full.

On August 14, 1989, the applicant filed exceptions to the initial decision. On August 15, 1989, the Division filed exceptions. Thereafter, on August 24, 1989, the applicant filed a response to the Division's exceptions.

After consideration of the entire record in this matter, the Commission determined at its public meeting of November 1, 1989, to adopt the initial decision, subject to a modification to find that the applicant was disqualified pursuant to sections 86(c)(1), (2) and (g) because Cornell committed commercial bribery and unlawful labor practices. The decision to deny the application was memorialized by order dated November 3, 1989. Consistent with this determination, the order further required the termination

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2. It had been determined that the applicant was conducting such regular and continuing business with casino licensees as to require licensure. N.J.A.C. 19:43-1.2.

of all contracts between the applicant and casino licensees and their agents within fifteen days.

DISQUALIFICATION PURSUANT TO N.J.S.A. 5:12-86

The Division argued that the payments from Cornell to Kepner were made in violation of the commercial bribery statute, N.J.S.A. 2C:21-10. This statute provides, in pertinent part:

> a. a person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:....
>
> 5. a labor official, including any duly appointed representative of a labor organization or any duly appointed trustee or representative of any employee welfare trust fund....
>
> c. a person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

Commercial bribery is a disqualifying offense pursuant to section 86(c)(1) of the Act if it constitutes a crime of the third degree, that is, if the value of the benefit conferred is more than $1,000 and less than $75,000. N.J.S.A. 2C:21-10(d). It is undisputed that the benefits supplied to Kepner fell within this monetary range.

At the time the crime allegedly was committed, commercial bribery in violation of N.J.S.A. 2C:21-10 was a fourth degree crime. The statute was amended in 1986 to remove the prior designation of the crime as one of the fourth degree. Cornell argued that, if his conduct was

found to have been in violation of N.J.S.A. 2C:21-10, the former statute is controlling, and therefore the conduct could not constitute an enumerated disqualifying offense. The Commission disagrees.

The Act establishes standards for licensure which must be met at the time the application is heard. It is well settled that civil remedial statutes may be given retroactive application. Dept. of Environ. Prot. v. Ventron Corp., 94 N.J. 473, 499 (1983). This is true even if the result is to impose new liability based upon past conduct. Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16 (1976). The general prohibition against retroactive or ex post facto laws does not apply when 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 committed. See In re Garay, 89 N.J. 104, 111 (1982); In re Kaplan, 179 N.J. Super. 487, 493 (App. Div. 1981). Here, even in 1979-1983, when the conduct occurred, commercial bribery was a crime. Thus, the exception recognized in In re Resorts Casino Application, 10 N.J.A.R. 244, 254 (1979), that conduct which is legal when engaged in but later made illegal cannot be disqualifying pursuant to section 86 of the Act, is inapplicable to this case.

The critical issue presented in this case is the validity of the ALJ's conclusion that Cornell was the victim of extortion and therefore had a valid defense to the

criminal charges. However, the evidence does not support a claim of extortion.

Theft by extortion, pursuant to N.J.S.A. 2C:20-5, requires that a person purposely threaten to:

> a. inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense...
>
> e. bring out or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act...
>
> g. inflict any other harm which would not substantially benefit the action but which is calculated to naturally harm another person...

The defense of duress, which is intricately related to extortion, is set forth in N.J.S.A. 2C:2-9:

> [I]t is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

The ALJ concluded that Kepner never actually threatened Cornell in any fashion, either with bodily harm or economic deprivation of some nature. Nothing that Kepner said could even remotely be construed as an implied threat. Initial decision at 15. The ALJ found that the coercion was of a limited, implied and indistinct nature. He concluded that, based upon Cornell's knowledge of Kepner's unsavory reputation, Cornell reasonably believed that a refusal to

accede to Kepner's request "might cause difficulties for his company."[3] Initial decision at 23 (emphasis in original). A review of applicable case law indicates that, even if the latter finding is correct, it does not establish the legal defense of duress.

In State v. Toscano, 74 N.J. 421 (1977), the Court articulated the standard for considering a defense of duress, which was subsequently codified in N.J.S.A. 2C:2-9. The Court noted that the applicable standard for judging a defendant's excuse is how a person of reasonable firmness in the defendant's situation would respond, considering such factors as the immediacy and gravity of the harm threatened, the seriousness of the crime committed, the identity of the person endangered, the possibilities for escape or resistance and the opportunities for seeking official assistance.[4]

In other cases, courts have emphasized that if there was a reasonable, legal alternative to violating the law, a

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3. There is evidence that Cornell believed the union may have been responsible for sinking his company's boat in the early 1970's after Cornell decided not to rent a boat from a member of the union. Initial decision at 10. However, Cornell conceded he did not know who sank his boat and it might not have involved Kepner or the union. (3T101-3 to 16).

4. In a criminal matter, the burden of proof is on the State to disprove the affirmative defense of duress once evidence supporting the defense is established. State v. Galiyano, 178 N.J. Super. 393 (App. Div. 1981), certif. den. 87 N.J. 424 (1981).

chance both to refuse to commit the criminal act and also to avoid the threatened harm, the defense of duress would fail. In United States v. Bailey, 444 U.S. 394 (1980), the Supreme Court rejected a defense of duress to a charge of escape where the accused failed to demonstrate that, given the imminence of the threat, violation of the escape statute was his only reasonable alternative.

In United States v. Mitchell, 725 F. 2d 832 (2 Cir. 1983), the court rejected a defense of duress to a charge of robbery and observed that the accused was not in constant company with his alleged coercer prior to the robbery. The evidence failed to demonstrate why the defendant could not have taken reasonable steps to remove himself from any perceived or apparent danger or to complain to law enforcement authorities.

In United States v. Miller, 340 F. 2d 421 (4 Cir. 1965), the defendant, a candy distributor who did extensive business with the armed services, was charged with bribery of the manager of an army commissary. Miller claimed as his defense that he paid the money because he thought he had to give the manager something or he would lose his business with the commissary. The court held that, although the threat of economic harm may under some circumstances result in extortion, there was no proof that the commissary manager had threatened the defendant with economic harm unless the periodic payments continued. The defendant, by his payments, was purchasing influence and favored treatment

from the employee. The fear of losing his illegal advantage if the payments were discontinued was not extortion but was bribery. 340 F. 2d at 425.

In this case, not only was Cornell never threatened, but because of the prolonged duration of the criminal activity, Cornell certainly had sufficient opportunity to alert the police rather than to acquiesce to Kepner's wishes. While it may sometimes demand a hard choice, the law requires that people in Cornell's position expose corrupt practices unless the extortion is so overpowering as to negate criminal intent or willfulness. As noted repeatedly by our courts, the proper response to coercion is to notify the authorities, not to make the payoff. See United States v. Kahn, 472 F. 2d 272, 278 (2 Cir. 1973), cert. den. 411 U.S. 982 (1973). In this case, Cornell not only paid, but he paid for four years, and then kept silent for an additional four years. This silence speaks loudly. Once Kepner solicited the condominium and the vehicles, Cornell agreed to the scheme knowing that what he was doing was illegal.

The ALJ gave undue weight to the fact that Kepner initiated the transaction. A party who pays a bribe after being solicited by the payee is no less guilty than if he initiated the illicit conduct. The critical element is not who initiated the act, but whether Cornell acted under duress as that term is defined under the law. In this case,

applying the Toscano standard, the defense of duress was not established.

Therefore, the ALJ's finding of a valid defense to the charge of commercial bribery is rejected. Absent this defense, it is clear from the record that Cornell committed not only bribery, but that he also violated the provisions of the Taft-Hartley Act, 29 U.S.C. 186(a). That statute makes it unlawful:

> a. ...for any employer or association of employers or any person who acts as a labor relations expert, advisor, or consultant to an employer who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, or deliver, any money or other thing of value -
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce; or
> (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or
> (3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or
> (4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of

> employees or as such officer or employee of such labor organization.

29 U.S.C. 186(d) requires a "willful" violation.

The ALJ found no labor law violation, again relying on his conclusion that Cornell was the victim of extortion. The ALJ also determined that Cornell "was not sufficiently aware of the terms of the Taft-Hartley Act to subject him to a finding that he was willfully violating it...." Initial decision at 28. He made this latter finding notwithstanding the fact that he had little doubt that Cornell must have understood that what he was doing was in violation of the law. Initial decision at 28.

The ALJ erred in finding no Taft-Hartley violation. Although under certain circumstances extortion may be a defense to this charge, as implied by Arroyo v. United States, 359 U.S. 419 (1959), the record does not support a finding of extortion for the reasons already discussed. Further, the ALJ's conclusion that it was necessary for Cornell to be aware of the specific law he was violating is clearly contrary to well-established legal authority. Although Cornell may not have been aware of the specific law he was violating, he recognized that his actions were illegal and testified to that effect at Kepner's trial.

In United States v. Bloch, 696 F. 2d 1213, 1216 (9 Cir. 1982), the court held that "a willful violation of 29 U.S.C. §186(b) requires only that the defendant act with knowledge that the payments are from a person acting in the interest

of an employer and are intended to influence the defendant's duties as a union employee; knowledge of the statutory prohibition itself is not necessary." (Emphasis added). Similarly, in United States v. Carter, 311 F. 2d 934, 943 (6 Cir. 1963), cert. den. 373 U.S. 915 (1963), reh. den. 373 U.S. 954 (1963), the court stated that it was not necessary to a finding of willfulness under this statute that the accused be aware of the specific statute. See also United States v. Ryan, 232 F. 2d 481, 483 (2 Cir. 1956).

These cases are in accord with the general principle expressed by Judge Learned Hand in American Surety Company of New York v. Sullivan, 7 F. 2d 605, 606 (2 Cir. 1925): "the word 'willful' even in criminal statutes, means no more than that the person charged with the duty knows what he is doing. It does not mean that in addition, he must suppose that he is breaking the law."

Admittedly, a contrary conclusion was reached in United States v. Inciso, 292 F. 2d 374, 380 (7th Cir. 1961), cert. den. 368 U.S. 970 (1961), where the court held that section 186(d) requires an awareness of the restrictions under the statute or reckless disregard of the statute. However, the decisions holding that knowledge of the statutory proscription is not necessary for a finding of culpability appear to be correct and to be consonant with the law of New Jersey, generally. See e.g., Morss v. Forbes, 24 N.J. 341 (1957); State v. Moore, 158 N.J. Super. 68 (App. Div. 1978).

In Morss v. Forbes, supra, the state Supreme Court expounded at length on this principle:

> The ordained inquiry is whether the act condemned was committed with full knowledge of the facts, in a conscious and purposeful manner, without legal justification or excuse. It must not be the product of inadvertence or negligence or any state of mind other than a free and untrammeled will. This is the definition of criminal intent embodied in the words "willfully and maliciously," as used in this statute. The accused must intend to act in the way proscribed by the statute, but it is immaterial that he does not know or believe his conduct violates the law.
>
> Even positive belief that the act is lawful should not exempt the doer from criminal responsibility. Consciousness of unlawfulness is not essential .... If ignorance were a good defense, the administration of the penal law would again depend upon the well-nigh impossible ascertainment of hazy and amorphous mental conditions and opaque logic. [24 N.J. at 359].

Further, N.J.S.A. 2C:2-2(d) expressly states:

> Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the code so provides.

Commercial bribery is a statutory disqualifier under section 86(c)(1) of the Act. However, section 92(d) does not require automatic disqualification from casino service industry licensure even if a section 86 disqualifier exists. The Commission retains discretion to license such an applicant. Recently, the Commission determined in Edward

Bershad Company v. State of New Jersey, et. al., 12 N.J.A.R. 48 (1989), that in exercising its discretion under section 92(d), the Commission would evaluate the rehabilitative factors enumerated in sections 90(h) and 91(d) to determine whether to grant a casino service industry license where a statutory disqualifier exists.

The Taft-Hartley violation, although not a listed statutory disqualifying offense, may be a disqualifying "inimical" offense under section 86(c)(2). In order to find that an offense is of such a nature as to render a person's licensure inimical to the policies of the Act, it is necessary to examine the offense and the applicant in light of those same rehabilitative factors. See In the Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License, Docket No. 87-CSI-10, ___ N.J.A.R. ___ (Decided September 1, 1988), aff'd Docket No. A-6091-87T1 (App. Div. May 11, 1989); certif. den. 117 N.J. 139 (1989); Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301, 314 (1985).

The pertinent factors to be considered in sections 90(h) and 91(d) are: (1) the nature of the enterprises relationship with the casino industry; (2) the nature and seriousness of the offense or conduct; (3) the circumstances surrounding it; (4) the date it occurred; (5) the age of the person or persons responsible; (6) whether the offense was isolated or repeated; (7) any social conditions which may

have contributed to the offense or conduct; and (8) any evidence of rehabilitation.

Clearly, the most significant factor here is the nature and seriousness of the offense. The conduct relating to the commercial bribery and Taft-Hartley violations involved unlawful payments to a corrupt union official to buy labor peace. Such conduct fostered Kepner's nefarious schemes and prevented early government detection to stop the corruption. As witnessed by its prior decisions, the Commission has steadfastly sought to prevent the infiltration of the casino industry by corrupt union officials. See Matter of Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985), certif den. 102 N.J. 352 (1985), cert. den. 475 U.S. 1085 (1985). Moreover, the underlying offense here is bribery, an offense which is intrinsically repugnant to the concerns of a strict regulatory process. See Bershad, supra; Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584, 629-630 (1980). Accordingly, it would require substantial mitigating circumstances or evidence of rehabilitation to overcome the presumption of disqualification that arises from a finding of relatively recent bribery.

Cornell maintains that he was coerced into making the payments. However, as noted, Cornell was not threatened by Kepner and had ample opportunity to notify the police. For these reasons, these offenses cannot be discounted by the "mitigating circumstances" which he now asserts. Although

there may have been some risk to Cornell in not complying, society requires and the law mandates that reasonable alternatives be taken to prevent the illegalities from continuing.

With respect to evidence of rehabilitation, the Commission has considered all of the favorable character and reputation evidence offered by Cornell including Cornell's cooperation with law enforcement authorities. The Assistant United States Attorney in charge of the Kepner investigation praised Cornell for his cooperation in testifying against Kepner. However, Cornell never sought the authorities to notify them about Kepner. He did not begin to cooperate until federal authorities approached him in 1987, several years after the unlawful conduct had ceased. Even then, Cornell did not initially advise the authorities about the vehicles. It must be concluded from this record, as the ALJ did, that if the federal law enforcement officers had not approached Cornell, he would not have called Kepner's activities to anyone's attention. Initial decision at 36.

Under all of the enumerated factors, including the nature and seriousness of Cornell's actions, his violation of the Taft-Hartley Act renders his licensure inimical to the policies of the Act. With respect to the statutory disqualifier of commercial bribery, the applicant has not overcome the disqualification and licensure must be denied on this basis.

The Division asserts other grounds for Cornell's disqualification, namely his commission of the offenses of falsifying records, N.J.S.A. 2C:21-4(a) and racketeering and conspiracy, N.J.S.A. 2C:41-2(c), (d) and 2C:5-2. With respect to the falsifying records offense, the record may support this charge. However, in light of the existence of the statutory disqualifying commercial bribery offense, then it is a reasonable exercise of the discretion afforded under section 92(d) that this offense is not itself disqualifying. This decision is based primarily upon the fact that Cornell's qualification turns not on improper bookkeeping but rather on a susceptibility to corrupt influences as reflected in the commercial bribery violation.

Similarly, the evidence may establish that Cornell was guilty of racketeering and conspiracy to commit racketeering. It is not necessary to reach those conclusions in light of the other violations impacting upon Cornell's suitability for licensure.

Separate and apart from the disqualification pursuant to section 86, Cornell and the company for which his qualification is required are presently unsuitable for licensure because they failed to demonstrate good character, honesty and integrity. Cornell claims that there is no requirement that non-gaming casino service industries affirmatively establish good character, honesty and integrity. This argument is devoid of merit. The Commission is empowered by section 92(c) to determine the

specific qualification criteria for such companies. The good character criteria have been appropriately adopted by regulation, N.J.A.C. 19:43-1.3(c).[5]

As to the evidence of good character, honesty and integrity, several individuals with impeccable credentials willingly came forward to praise Mr. Cornell's candor, honesty and trustworthiness. Of course, due regard must be given to such positive opinion and reputation testimony. However, an evaluation of this evidence must include not only the relationship of each witness to Mr. Cornell, but more importantly, the reliability and scope of the basis on which the opinion and reputation testimony rests. Greater weight must be attributed to the fact that Cornell engaged in commercial bribery and unlawful labor practices and the impact of those actions on a good character analysis than to the favorable proofs in the form of opinion and reputation evidence. See In re Bally's Casino Application, 10 N.J.A.R. 356 (1981). Cornell's vulnerability to corrupt influences is particularly disturbing in evaluating his suitability for licensure. In addition, Cornell's unwillingness to notify law enforcement authorities about his relationship with Kepner, even after the payments had ceased, until the federal authorities approached him, is especially revealing

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5. This affirmative criteria for licensure is applicable only to Charles Cornell and Company, Inc., not the related companies cited in the complaint.

in assessing good character. Thus, even with ample consideration being given to Cornell's good character evidence, Cornell failed to establish good character, honesty and integrity by clear and convincing evidence.

For the foregoing reasons, the initial decision is modified to find Cornell and Company, Inc., disqualified pursuant to sections 86(c)(1), (2) and (g) by reason of Cornell's commission of the following offenses: commercial bribery and unlawful labor practices. The ALJ's finding, that Cornell failed to establish good character, honesty and integrity, is affirmed. The application for licensure is denied. Consistent with this ruling, a prohibitory order shall issue against further business between the company and casino licensees and applicants, including a termination of any existing agreements.

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

W. David Waters, Commissioner

E. Kenneth Burdge, Commissioner

Frank J. Dodd, Commissioner

Dated: [illegible]

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-15
APPLICATION NO. 61661-22
REGISTRATION NO. 61775-40
OAL DOCKET NO. CCC 08132-88
ORDER NO. 89-27-17

APPLICATION OF JONATHAN M. CRAY — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 5, 1989,

IT IS on this 7th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Jonathan M. Cray for a casino employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

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

IT IS FURTHER ORDERED that this denial shall not affect Jonathan M. Cray's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly/nm

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8132-88
AGENCY DKT. NO. 89-EA-15

JONATHAN M. CRAY,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Jonathan M. Cray, petitioner, pro se
Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 6, 1989 Decided: May 23, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on June 29, 1988, recommending that the Commission deny petitioner's application for a casino employee non-gaming license. The Division asserts that the petitioner lacks the good character, honesty and integrity required for casino employee licensure by N.J.S.A. 5:12-89b(2) and 90b because of an Illinois conviction for his involvement in a "pyramid scheme". The petitioner requested a hearing on October 5, 1988 and the matter was transmitted

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to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on December 29, 1988, and a plenary hearing convened on April 6, 1989.

STATEMENT OF THE ISSUE

Does the petitioner possess the requisite good character, honesty and integrity required for casino employee licensure by the Casino Control Act (Act) at N.J.S.A. 5:12-89b(2) and 90b?

FACTUAL DISCUSSION

The petitioner, a life long Atlantic County resident, was convicted in Illinois, by a jury, on September 2, 1982, on the charge of conspiracy to commit gambling (operating a pyramid scheme). He was placed on probation for a period of 18 months and fined $2,784.00 His probation was extended until August 28, 1986, in order to give the petitioner time to complete payment of the fine. The petitioner's case was marked "Successful Termination" (R-3) on August 28, 1986, after he paid his fine in full.

The underlying facts leading to the conviction began in New Jersey in late 1980. At that time the petitioner was introduced, by his father, to an organization known as Co-op Investments. Co-op Investments offered a possible $35,000 return on a $650 investment. Coop Investments was a pyramid scheme. Individuals who "invested" $650 were eventually able to share in the proceeds of other "investments" of $650 as new "investors" began to enroll in Co-op in ever increasing numbers.

The organizational "spokesman", one Donald Sanders, sought to convince prospective "investors" that the scheme was legitimate. Sanders did this by means of clever schematics which portrayed the organizational ladder as an hourglass rather than a pyramid, by a disclaimer that the organization was not a pyramid scheme, by a disclaimer that there was no guarantee of success, and finally, that not all "investors" would make money.

Sanders was very successful. Many New Jersey citizens, including some local business leaders, succumbed to the message. Some New Jersey State Police officers lent their names and persons to the organization. They were later convicted in this State.

It is patently clear that the program was a "pyramid scheme". There was no product or service offered. Early "investors" shared in the investments of later "investors".

Co-op moved from New Jersey and Pennsylvania to Illinois as a result of Court orders restraining the organization from doing business in New Jersey and Pennsylvania. Co-op also changed its name to "New Concepts". The only other change the organization made in response to the restraints was to increase the amount of the initial investment from $650 to $675.

In Illinois the petitioner began to function as a "greeter" for the organization. He began to live entirely at the organization's expense in Illinois. The organization paid his hotel room; it paid for food, gas and health club expenses. It also paid him cash; approximately $2000 in the 30 or 40 days the organization thrived in Illinois before the arrest of all its members, including the petitioner, on April 28, 1981. He had begun to participate in the "investments" of new members.

The arresting officers described the petitioner as a "Security Officer" for the organization. He maintains that he was only a "greeter", a person who welcomed prospective investors to meetings, answered some elementary questions about the organization and checked to make sure prospective "investors" were sponsored. He also "visually checked" the prospective investors. He admitted to "signing someone up at least once".

The petitioner was convicted by a jury and sentenced to pay a fine and serve a period of probation. He has satisfied the fine and completed a period of probation.

As evidence of his good character, the petitioner offered letters from persons who have supervised him in the past, and from the clergy, testifying to his good

character, honesty and integrity. There is no doubt that petitioner enjoys a good reputation, both in the casino where he was employed, and in his church.

The petitioner also offered anecdotal evidence of his good works. I have no doubt that the petitioner is capable of doing charitable acts.

The petitioner also emphasized his youth at the time of his arrest and his otherwise clean record; petitioner has not been arrested since this conviction and he had never been arrested before this conviction.

Finally, petitioner pointed to the large number of local luminaries who became investors in Co-op and to the fact that New Jersey Policemen lent their names and presence to the organization. He offered these facts as mitigation for his own youthful involvement. Nevertheless, he continued with the organization after New Jersey and Pennsylvania courts ordered the organization to cease and desist.

Unfortunately, the petitioner also insisted that he had done nothing really wrong. He said he had no regrets. He tried to explain that Co-op was not a "pyramid scheme" but a legitimate business opportunity.

DISCUSSION AND CONCLUSION

The petitioner is unable to distinguish between a legitimate business opportunity and a confidence game. After all, a pyramid scheme is nothing more than a confidence game played to a crowd. It is not expected that persons of good character, honesty and integrity will prey on others. It is no matter that the "others" are also opportunists. An honest man or woman does not prey on others, no matter how greedy the victims may be.

The requirement that casino employees must possess good character, honesty and integrity was made law in order to prevent the abuse of casino patrons by unscrupulous and unprincipled casino employees. It is a qualification intended to limit entree to casino positions of persons who may be a danger to the public and to the integrity of casino gambling.

I **CONCLUDE** that the petitioner lacks the good character, honesty and integrity required for casino employee licensure.

I **ORDER** that petitioner's application for casino employee licensure be **DISMISSED**.

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

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

5/23/89
DATE

EDGAR B. HOLMES, ALJ

Receipt Acknowledged:

5/25/ 89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 2 6 1989
DATE

OFFICE OF ADMINISTRATIVE LAW K.S.

dho

WITNESS LIST

For the Petitioner:

Jonathan M. Cray

For the Respondent:

Jonathan M. Cray

EXHIBIT LIST

For the Petitioner:

P-1 Letter from Trump Supervisor
P-2 Letter from William Brown
P-3 Follow-up letter from William Brown
P-4 Letter from William Ruski
P-5 Letter from Frederick R. Sikes
P-6 Letter from Kenneth E. North, Esq.
P-7 Letter from Reverend Irvin J. Bell

For the Respondent:

R-1 Indictment
R-2 Investigative Report, Illinois Authorities
R-3 Judgment of Conviction
R-4 Newspaper Articles

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-CSI-18; 88-94
OAL DOCKET NO. CCC 8330-88
(ON REMAND)
LICENSE NOS. 18-11; 504-60; 36-60
ORDER NO. 89-33-15

RENEWAL APPLICATION OF PETER G. DEMOS, JR. FOR HIS RESIDENT DIRECTOR AND GAMING SCHOOL INSTRUCTOR LICENSES, AND CASINO KEY EMPLOYEE LICENSE	
AND	ORDER
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	
PETER G. DEMOS, JR.,	
Respondent.	

This matter having been remanded to the Office of Administrative Law (OAL) by the Casino Control Commission by order dated November 9, 1988; and the Division of Gaming Enforcement (DGE) having entered into a stipulation of settlement with respondent Peter G. Demos, Jr., and having filed same with the OAL; and the initial decision of the administrative law judge incorporating the stipulation of settlement having been filed with the Commission; and the DGE having disavowed the stipulation of settlement; and the Commission having considered the entire record of these proceedings at its public meeting of August 16, 1989;

IT IS on this 20th day of September 1989, ORDERED that the initial decision-settlement is rejected for good cause shown; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for further proceedings on the issues raised by the DGE's complaint and letter-reports regarding Mr. Demos' qualifications as a resident director, gaming instructor and key employee.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8330-88

AGENCY DKT. NO. 88-CSI-18 & 88-94

(CCC 8692-87 On Remand)

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

v.

PETER G. DEMOS, JR.,
Respondent.

Wendy Alice Way, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Alfred J. Bennington, Jr., Esq., for respondent (Bennington & Williams, attorneys)

Record Closed: June 1, 1989 Decided: June 6, 1989

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

This matter originally came before the Office of Administrative Law following transmittal from the Casino Control Commission as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The Division had filed a complaint against respondent Demos, as well as Casino Schools Incorporated (CSI) and Rosemary Monacello, alleging that the School, Demos, who was its Resident Director, and Monacello, who was an administrative employee, had violated various statutory and regulatory provisions of the Casino Control Act and regulations adopted pursuant thereto in connection with the operation of the

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School. Following extensive negotiations all respondents entered into a Stipulation of Settlement with the petitioner. After reviewing the Stipulation the Casino Control Commission approved the settlement between petitioner and respondents CSI and Monacello, but determined that the terms and conditions of the settlement between petitioner and respondent Demos could not be accepted. The case was remanded to the OAL for a full hearing on Mr. Demos' alleged violations, with the suggestion that the parties engage in further attempts to resolve the matter if possible.

The parties have now entered into a new Stipulation of Settlement. This document is attached to this initial decision, along with exhibits which are part of the Stipulation. Pursuant to the terms of the Stipulation the respondent Demos has agreed to surrender his casino key employee number 18-11 (endorsement: pit boss-all games/credit executive); his Resident Director of a gaming school license number 504-60; and his license number 36-60 as a gaming school instructor in black jack and craps. Mr. Demos has further agreed in the Stipulation that his conduct in connection with the operation of and as Resident Director of CSI resulted in violations of N.J.A.C. 19:44-8.3, 8.4, 8.2(a)(13) and 8.5 in connection with specific incidents and allegations contained in the Complaint and detailed fully in the Stipulation of Settlement. Mr. Demos has acknowledged his violations on the record before the administrative law judge on June 1, 1989 in the course of the presentation of the Stipulation of Settlement.

Based upon the information contained in the Stipulation and on the presentations of counsel, as well as upon the comments made by members of the Casino Control Commission at the public hearing on the previous Stipulation of Settlement, it appears that the settlement now entered into by the parties fully and completely resolves the issues in dispute between them and, in connection with Mr. Demos' various licenses, results in the termination of all of those licenses. This would appear to cure the concern raised by the Commission in the public hearing as to the previous settlement which incorporated a suspension of the casino key employee license number 18-11 (endorsement: pit boss-all games/credit executive) which resulted in the rejection of the previous settlement. The parties are **ORDERED** to comply with the terms and conditions of the Settlement. It shall of course become effective only upon acceptance by the Casino Control Commission.

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

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

June 6, 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

6-7-89
DATE

Dolores Sisat
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 9 1989
DATE

Jacque La Venture/A.S
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-08692-87
AGENCY REF. NOS. 88-CSI-18
88-94

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. PETER G. DEMOS, JR., Respondent.	STIPULATION OF SETTLEMENT

PLEASE TAKE NOTICE that the above captioned matter has been discussed by and between the Parties involved, Complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by and through its attorney, Peter N. Perretti, Jr., Attorney General of New Jersey, by Fredric E. Gushin, Assistant Attorney General, and by Wendy Alice Way, Deputy Attorney General, and Respondent Peter G. Demos, Jr., by and through his attorneys, Bennington and Williams, by Alfred J. Bennington, Jr., Esquire;

AND said factual matters having been resolved between the Division and Respondent Demos;

IT IS HEREBY STIPULATED AND AGREED by and between the Division and Respondent Demos that, for the purposes of the disposition of the above-captioned matter, the following is true and correct as stated:

AS TO COUNT I OF COMPLAINT
NO. 88-94

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter "Division"), is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1 et seq., hereinafter "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Casino Schools Incorporated (hereinafter "CSI"), is now and at all times referenced herein has been a corporation organized

and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at 1923 Bacharach Boulevard, in the City of Atlantic City, County of Atlantic, and State of New Jersey.

3. CSI operates as a gaming school which is defined by N.J.A.C. 19:44-1.1 as follows:

> [A]ny person or school, whether or not a governmental agency, teaching any course or program of instructon, which is a casino service industry enterprise, as defined in the act or the regulations of the commission, or which shall enroll any student or offer any course to the public of this State or do any other business whatsoever in this State, whether for compensation or not, relating to such teaching. All gaming schools are hereby deemed to be casino service industry enterprises and are required to be licensed as gaming schools in accordance with sections 92a and b of the act and the regulations of the commission.

4. Pursuant to N.J.S.A. 5:12-92(a), CSI is now and at all times referenced herein has been the holder of a casino service industry license issued by the Commission authorizing it to operate a gaming school in accordance with the Act and the regulations promulgated thereunder. The said license was initially issued to CSI effective on June 11, 1980 and has been renewed on November 16, 1982. CSI has most recently filed for renewal of said license on May 2, 1988 which renewal was granted by the Commission through the period ending June 11, 1988. CSI has been conducting its gaming school operation pursuant to said license continually to date since the November 26, 1980 issuance of a Certificate of Operation and including all times referenced herein.

5. CSI is the holder of, and operates pursuant to, a Certificate of Operation effective November 26, 1980. Said Certificate of Operation entitles CSI to operate a gaming school in accordance with the Act and the regulations promulgated thereunder. No Certificate of Operation shall be issued to a gaming school unless it has established to the satisfaction of the Commission, inter alia, the adequacy of its courses or programs of instruction; the adequacy of its system of recordkeeping; and that it has a properly licensed resident director in its employ who has established his qualifications in accordance with the casino key employee standards excluding New Jersey residency as set forth in Sections 86, 89 and 92b of the Act and the regulations of the Commission.

6. Pursuant to N.J.A.C. 19:44-1.1, the term "resident director" is defined as follows:

> the person who is responsible for the day-to-day operation or administration of the school or who has supervisory authority over all employees of the school. [Emphasis added.]

7. From December 1, 1980, when CSI opened, through and including January 22, 1988, CSI employed Respondent Peter G. Demos as Resident Director.

8. Respondent Demos holds license #504-60 (expiration date November 1990) as a Resident Director; license #38-60 (expiration date April 1990) as an instructor in blackjack and craps; and license #18-11 (expiration date June 1989) as a casino key employee with the endorsement of pit boss/all games and credit executive.

Respondent Demos was the Resident Director of CSI at all times material herein.

9. As Resident Director of CSI, Respondent Demos was, pursuant to N.J.A.C. 19:44-1.1, responsible for the day-to-day operation and administration of the gaming school and had supervisory authority over the gaming school's employees. As Resident Director, Respondent Demos was also charged with the responsibility of possessing a thorough knowledge of the Act and the regulations promulgated thereunder.

10. As Resident Director, Respondent Demos was charged with the specific duty of ensuring that accurate records of CSI students, information critical to the operation of CSI, be maintained, compiled and filed with the Commission.

11. As Resident Director, Respondent Demos was responsible for establishing and implementing sufficient systems and controls which ensure the overall compliance of CSI and its employees with the Act and the regulations promulgated thereunder.

12. As Resident Director, Respondent Demos established an organization chart, a true and correct copy of which is attached hereto and made a part hereof as Exhibit J1, of CSI employees. Said organization chart was in effect at all times referenced herein.

13. At all times material herein, Rosemary Monacello (CCC Lic. No. 1105-60) has been employed by CSI as an administrative employee pursuant to N.J.A.C. 19:44-1.1. As an administrative employee, Rosemary Monacello is employed in a non-teaching capacity

and is also charged with the responsibility of possessing a knowledge of the Act and the regulations promulgated thereunder.

14. During his sworn interview conducted by the Division on January 12, 1987, Respondent Demos testified that, as Resident Director, he had delegated to Rosemary Monacello, an administrative employee of CSI, the following duties:

(a) the day-to-day supervision of CSI's administrative/office/clerical staff inclusive of interviewing initially the members of said staff for employment (T27 1 18-19);

(b) the clerical training of CSI's administrative/office staff [T28 1 16-17];

(c) the scheduling of CSI gaming courses [T28 1 18-23); and

(d) providing orientation to full-time and part-time instructors employed by CSI [T31 1 22-24].

A true and correct copy of the transcript of Respondent Demos' sworn interview is attached hereto and made a part hereof as Exhibit J2.

15. Respondent Demos delegated to Rosemary Monacello the responsibility of providing to the Commission the information aforementioned in paragraph 10. With the knowledge of Respondent Demos, Rosemary Monacello further delegated this responsibility to the graduation coordinator of CSI. At all times material herein, the graduation coordinator of CSI was Elizabeth Rifice. Ms.

Rifice was not required to be licensed pursuant to N.J.A.C. 19:44-1 et seq.

16. In his sworn interview, Respondent Demos testified that he did not review the information on student records maintained, compiled and filed on behalf of CSI with the Commission prior to such filing. [T28 1 5-8]

17. Pursuant to N.J.A.C. 19:44-1.1, the term "course" is defined as follows:

> [A] unit of educational instruction or training in a specific subject area of gaming and playing or dealing techniques which upon successful completion may be used to satisfy any experiential or training requirements imposed by the commission as a prerequisite to licensure as a casino key employee or casino employee.

18. N.J.A.C. 19:44-8.3 was in effect at all times referenced herein and states:

> a. Any training or instruction designed to prepare a student for employment as a dealer of roulette, blackjack, baccarat or craps shall satisfy the following minimum requirements:
>
> 1. For a student being trained to deal his first game the following minimum hours of training and instruction shall be required:
>
> i. 160 hours to prepare a student to deal blackjack;
>
> ii. 200 hours to prepare a student to deal baccarat;
>
> iii. 200 hours to prepare a student to deal roulette; and
>
> 2. For a student being trained to deal his second or subsequent game, the following minimum hours of training and instruction shall be required:
>
> i. For a student who has been training to deal blackjack;
>
> (1) 180 hours to prepare him to deal craps;
>
> (2) 120 hours to prepare him to deal roulette; and

(3) 80 hours to prepare him to deal baccarat.

ii. For a student who has been trained to deal roulettte:
(1) 180 hours to prepare him to deal craps;
(2) 80 hours to prepare him to deal blackjack; and
(3) 80 hours to prepare him to deal baccarat.

iii. For a student who has been trained to deal craps:
(1) 120 hours to prepare him to deal roulette;
(2) 80 hours to prepare him to deal blackjack; and
(3) 80 hours to prepare him to deal baccarat.

iv. For a student who has been trained to deal baccarat:
(1) 180 hours to prepare him to deal craps;
(2) 120 hours to prepare him to deal roulette; and
(3) 80 hours to prepare him to deal blackjack.

19. From June through and including November 1986, CSI graduated four (4) students who were absent from class and as a result did not receive the requisite minimum number of hours of training and instruction enumerated in N.J.A.C. 19:44-8.3. The following table represents as to said students of CSI: the number of hours they were absent, the courses in which the students were enrolled and the minimum number of hours of instruction required pursuant to N.J.A.C. 19:44-8.3:

Name of Student	No. of Hours Absent	Course	Total No. of Hrs. Required
Karen Havlick	10	Blackjack (1st Game)	160
Laura Beu	15	Baccarat (2nd Game)	80
William Kilduff	46	Roulette (2nd Game)	120
Peter Rose	20	Baccarat (2nd Game)	80

20. At all times referenced herein, regularly scheduled courses of instruction offered to its students by CSI were conducted only on Mondays, Tuesdays, Wednesdays and Thursdays.

21. From June through and including November 1986, CSI graduated seven (7) students who were absent from their regularly scheduled classes as aforementioned in paragraph 20 and as a result did not receive the requisite minimum number of hours of training and instruction enumerated above in N.J.A.C. 19:44-8.3. Said seven (7) students, however, were given credit by CSI against minimum number of hours required because said students reported to CSI for practice on Fridays even though CSI offered no supervised courses of training and instruction on Fridays. The following table represents as to said students of CSI: the number of hours for which they received credit against the minimum hours of training and instruction required pursuant to N.J.A.C. 19:44-8.3 even though said students were neither trained nor instructed, the course in which the student was enrolled and the number of hours of instruction required pursuant to N.J.A.C. 19:44-8.3:

Name of Student	No. of Hours Absent	Course	Total No. of Hrs. Required
Robert Horvath	10	Baccarat (2nd Game)	80
William Kilduff	90	Roulette (2nd Game)	120
Deneen Moskosky	46	Blackjack (1st Game)	160
Rafael Mora	86	Blackjack (1st Game)	160
Christopher Hernandez	98.5	Craps (1st Game)	240
Karen Havlick	25	Blackjack (1st Game)	160

WHEREAS, the Division contends and Respondent Demos admits that Respondent Demos has violated N.J.A.C. 19:44-8.3 inasmuch as he has permitted to graduate the students identified in paragraphs 19 and 21 above who did not receive the requisite minimum hours of training and instruction enumerated in said regulation.

AS TO COUNT II OF COMPLAINT
NO. 88-94

22. N.J.A.C. 19:44-8.4 states:

> Upon satisfactory completion of any course or program of instruction, the gaming school shall, in writing, certify directly to the Commission that the student has completed the said course or program of instruction.

23. From June through and including November 1986, CSI certified by formal letter to the Commission that each of the students identified in paragraphs 19 and 21 above completed the requisite minimum number of hours of training and instruction set forth in N.J.A.C. 19:44-8.3 and were therefore entitled to receive

licensure in the respective games even though said students did not in fact receive from CSI the requisite minimum number of hours of training and instruction enumerated in N.J.A.C. 19:44-8.3.

24. The Commission, based upon the certification of CSI, issued licensure position additions to the individuals set forth in paragraphs 19 and 21 above.

WHEREAS, the Division contends and Respondent Demos admits that by certifying to the Commission that said students identified in paragraphs 19 and 21 above had properly completed the said courses or programs of instruction even though said students did not in fact receive the requisite minimum number of hours of training and instruction as required by N.J.A.C. 19:44-8.3, Respondent Demos violated N.J.A.C. 19:44-8.4.

AS TO COUNT III OF COMPLAINT NO. 88-94

25. N.J.A.C. 19:44-18.1(b) states:

> A permanent record, in a form approved by the commission, shall be maintained for each student indefinitely. This record shall show the course or program of instruction attended, the total amount of tuition paid or owed, the total hours of training actually received, the date of completion or withdrawal and, for students enrolled in a course designed for second or subsequent game training, verification that the students meets the minimum hours of training and instruction required for enrollment in such a course. In the event of the closing of a school, the student's permanent record shall be forwarded to the Commission.

26. Counts I, II and III of Complaint No. 88-94 concern the following: during a six (6) month period from June 1986 through and including November 1986, the graduation by CSI of nine (9) students

who had not received the minimum number of hours of instruction required by N.J.A.C. 19:44-8.3; the certification by CSI to the Commission that each of the nine (9) students had completed CSI's course instruction; and the maintenance by CSI on a permanent student record as required by N.J.A.C. 19:44-18.1(b) that each of said nine (9) students had received the required minimum number of hours of instruction.

27. Prior to December 15, 1986, the prevailing CSI policy permitting the unsupervised make-up of missed hours of instruction provided as follows:

> Make-up hours: Have the students making-up hours fill out a make-up slip. Sign the slip and turn it in with your daily sign in sheet. Make up slips are on the reception desk. Please impress upon your students how important it is to fill out make-up slips or they will not be credited for the hours.

A true copy and correct copy of this CSI policy is attached hereto and made a part hereof as Exhibit J3.

28. The CSI policy permitting the unsupervised make-up of missed hours of instruction aforedescribed in paragraph 27 was revised and superseded by the December 15, 1986 memorandum from Respondent Demos to "All Instructors." Said memorandum was prepared by Administrative Employee Monacello and provides that instructors "must adhere to strict make-up slip procedures. You are not to sign a make-up slip unless you personally watched students make up their time" and that instructors must not be "tardy or absent" from their classes. A true correct copy of the

CSI memorandum dated December 15, 1986 is attached hereto and made a part hereof as Exhibit J4.

29. A second CSI memorandum to "All Instructors" is undated. It was, however, revised in January 1987 by Administrative Employee Monacello with the concurrence of Respondent Demos and provides as follows:

> Make-up hours: You are not permitted to credit a student with make-up hours if they did not attend and properly participate in instruction or training. An instructor must be present for a student to make-up hours.

The revision superseded the prior CSI aforedescribed in paragraph 28. A true and correct copy of the CSI memorandum discussed in this paragraph is attached hereto and made a part hereof as Exhibit J5.

30. The regulatory violations committed by Respondent Demos pertinent to the nine (9) students aforedescribed in paragraphs 19, 21 and 26 were the results of said students failing to make-up missed hours of instruction or Respondent Demos' permitting said students to make-up missed hours of instruction without instructor supervision or Respondent Demos' failure to supervise the instructor responsible for certifying student class attendance.

WHEREAS, the Division contends and Respondent Demos admits that Respondent Demos has failed to maintain accurate permanent records in violation of N.J.A.C. 19:45-18.1(b) by maintaining permanent records recording those students identified in paragraphs 19 and 21 above showing that said students received the minimum number of hours of training and instruction required by N.J.A.C.

19:44-8.3 even though said students did not receive the requisite minimum number of hours of training and instruction as required by N.J.A.C. 19:44-8.3

AS TO COUNT IV OF COMPLAINT NO. 88-94

31. N.J.A.C. 19:44-8.2(a)(13) requires that for each course or program submitted to the Commission for approval, the gaming school shall submit a course or program outline in sufficient detail for proper evaluation which outline shall include the student-teacher ratio for each course or program.

31. N.J.A.C. 19:44-8.5 states as follows:

> No course or program of instruction shall be approved by the commission unless the commission shall have first been satisfied that the student-teacher ratio, physical facilities, equipment and classroom and laboratory space shall be such as to afford each student an adequate opportunity to master the subject matter and to afford the gaming school an adequate opportunity to determine the student's progress by testing, observation or performance.

32. By formal correspondence issued December 1, 1980 (a true and correct copy of which is attached hereto and made a part hereof as Exhibit J6) the Commission directed and required, inter alia, that "all approved courses or programs of instruction shall at all time conform to the following maximum ratios as adopted by the Commission." The maximum instructor/student ratios were set forth by said correspondence as follows:

Courses	Instructor/Students
Blackjack	1 to 20
Craps	1 to 16
Baccarat	1 to 18
Roulette	1 to 16

33. During his sworn interview with the Division, Respondent Demos testified that, during his tenure as Resident Director of CSI, no internal control procedures were in place to ensure CSI's compliance with the ratios aforedescribed in paragraph 32. [T55 1 5-11]

34. During Respondent Demos' tenure as Resident Director of CSI, no internal control procedures were in place (a) to monitor students' attendance at CSI classes; (b) to monitor student's attendance at Friday make-up classes; (c) to ensure the accuracy of the information maintained and complied on the records of CSI students; and (d) to ensure that the accuracy of the information filed with the Commission on behalf of CSI.

35. During his sworn interview, Respondent Demos testified that, throughout the duration of his tenure as Resident Director of CSI, he did not inform CSI instructors of the ratios established by the Commission as aforedescribed in paragraph 32 nor that said CSI instructors were required to adhere to said ratios.

36. From March 10, 1986 to November 4, 1986, CSI, as more fully described in Exhibit J7 attached hereto and made a part hereof, exceeded the maximum instructor/student ratio established

by the Commission and as set forth in paragraph 32 above in twelve (12) Blackjack courses.

37. From March 10, 1986 to April 7, 1987, CSI, as more fully described in Exhibit J8 attached hereto and made a part hereof, exceeded the maximum instructor/student ratio established by the Commission and as set forth in paragraph 32 above in five (5) Craps courses.

38. From February 3, 1986 to October 20, 1986, CSI, as more fully described in Exhibit J9 attached hereto and made a part hereof, exceeded the maximum instructor/student ratio established by the Commission and as set forth in paragraph 32 above in five (5) Baccarat courses.

39. From March 3, 1986 to December 1, 1986, CSI, as more fully described in Exhibit J10 attached hereto and made a part hereof, exceeded the maximum instructor/student ratio established by the Commission and as set forth in paragraph 32 above in four (4) Roulette courses.

40. In or about January 1987, Respondent Demos, by memorandum notified all of its instructors of the maximum ratios established by the Commission as aforedescribed in paragraph 32.

41. As a result of Respondent Demos' letter inquiry dated January 9, 1987 and formal CSI petition dated May 22, 1987 (#352701), the Commission, on February 14, 1988 and without objection from the Division, approved an increase in the student/teacher ratio to 24:1 from the preexisting 1980 standards of 20:1 for blackjack classes and 16:1 for craps classes.

42. The twenty five (25) CSI violations of the approved maximum instructor/student ratios were the result of the failure of CSI to implement the December 1, 1980 Commission staff directive aforedescribed in paragraph 32.

WHEREAS, the Division contends and Respondent Demos admits that by teaching and graduating students in courses of training and instruction which exceeded the instructor/student ratios as aforedescribed in paragraphs 36 through 39, Respondent Demos violated N.J.A.C. 19:44-8.2(a) (13) and 8.5.

AS TO COUNT V OF COMPLAINT NO. 88-94

43. N.J.A.C. 19:44-8.2(a)(13) requires that for each course or program submitted to the Commission for approval, the gaming school shall submit a course or program outline in sufficient detail for proper evaluation which outline shall include the student-teacher ratio for each course or program.

44. N.J.A.C. 19:44-8.4 states:

> Upon satisfactory completion of any course or program of instruction, the gaming school shall, in writing, certify directly to the commission that the student has completed the said course or program of instruction.

45. N.J.A.C. 19:44-8.5 states as follows:

> No course or program of instruction shall be approved by the commission unless the commission shall have first been satisfied that the teacher-student ratio, physical facilities, equipment and classroom and laboratory space shall be such as to afford each student an adequate opportunity to master the subject matter and to afford the gaming school and adequate opportunity to determine the student's progress by testing, observation or performance.

46. By letter dated June 6, 1986 (a true and correct copy of which is attached hereto and made a part hereof as Exhibit J11) CSI reported to the Commission that CSI had graduated students in two (2) 7:00 p.m. classes in Blackjack 101, which classes started on April 14, 1986 and ended on June 6, 1986, which classes were taught by two (2) instructors, namely, Peter Demos and Sadie Jones.

47. This information is false and inaccurate inasmuch as Blackjack 101 was taught as one (1) class by one (1) instructor, namely, Sadie Jones. The instructor/student ratio of said classes exceeded the maximum instructor/student ratio established by the Commission as aforedescribed in paragraph 32.

48. By letter dated July 31, 1986 (a true and correct copy of which is attached hereto and made part hereof as Exhibit J12), CSI reported to the Commission that CSI had graduated students in two (2) 7:00 p.m. classes in Blackjack 101, which classes started on June 9, 1986 and ended on July 31, 1986, which classes were taught by two (2) instructors, namely Beryl Tweedle and Sadie Jones.

49. This information is false and inaccurate inasmuch as Blackjack 101 was taught as one (1) class with one (1) instructor, Sadie Jones. The instructor/student ratio of said classes exceeded the maximum instructor/student ratio established by the Commission as aforedescribed in paragraph 32.

50. By letter dated October 2, 1986 (a true and correct copy of which is attached hereto and made part hereof as Exhibit J13), CSI reported to the Commission that CSI graduated students in two (2) classes in Baccarat 402, which classes stated on September 8,

1986 and ended on October 2, 1986, which classes were taught by two (2) instructors, namely, James Dickey and Steven Kuriscak.

51. This information is false and inaccurate inasmuch as Baccarat 402 was taught as one (1) class by one (1) instructor, James Dickey. The instructor/student ratio of said class exceeded the maximum instructor/student ratio established by the Commission as aforedescribed in paragraph 32.

52. The three (3) letter reports of CSI's then graduation coordinator Elizabeth Rifice to Commission affirmative action monitor Debbie Boykin-Greenberg including class lists were submitted at the time of graduation of each class in compliance with Commission affirmative action regulation N.J.A.C. 19:53-1.6(b) 6 which concerns "the composition of the student body in terms of the various groups protected" by the affirmative action regulations.

53. CSI had initially, prior to the commencement of each, scheduled two (2) instructors to teach each of the three (3) classes, namely: Demos and Jones to instruct the April 14 Blackjack 101 class; Tweedle and Jones to instruct the June 9 Blackjack 101 class; and Kuriscak and Dickey to instruct the September 8 Baccarat 402 class. However, only Jones, Jones and Dickey, respectively, in fact actually instructed these classes.

54. Each CSI letter, Exhibits J11 through J13, filed by graduation coordinator Rifice inaccurately reported that two (2) instructors rather that one (1) had taught the particular class.

55. As to each of the three (3) classes aforedescribed in paragraphs 46 through 51, "daily attendance sheets", student "diplomas" and student "audition evaluation reports" were signed only by the instructor who had actually taught the class.

56. CSI also submitted separate letter reports at the time of graduation with class lists and individual certificate letters to Commission employee license bureau analyst Longini in compliance with Commission gaming school regulation N.J.A.C. 19:44-8.4 which requires that a gaming school "certify...that the student has [satisfactorily] completed the course."

57. The three (3) classes aforedescribed in paragraphs 46 through 51 are included within the twenty-five (25) classes identified in paragraph 36 through 39 above as classes in which CSI exceeded the approved student/teacher ratios.

WHEREAS, the Division contends and Respondent Demos admits that Respondent Demos has violated N.J.A.C. 19:44-8.2(a)(13), 8.4 and 8.5 by exceeding the maximum number of instructor/student ratios established by the Commission as aforedescribed in paragraph 32 above and by the filing of the false and inaccurate information with the Commission as aforedescribed in paragraphs 46 through 51.

AS TO COUNT VI OF COMPLAINT NO. 88-94

58. Pursuant to N.J.A.C. 19:44-18.1(a)(4), CSI is required to maintain adequate records which shall be available to the Commission and to the Division and which shall include records for each student showing attendance, absence, progress, grades and completion dates of a course or program of instruction.

59. The daily attendance sheets maintained by CSI included information showing the name of the course, the name of the instructor of the course, the starting and completion dates of said course, the time of day during which the course was offered, the name of the students enrolled in the course listed in alphabetical order, a space for each student's signature, the time-in and time-out, the number of daily hours each student attended said course and the total number of hours each student attended said course.

60. CSI also maintains permanent records for each student which include information required by N.J.A.C. 19:44-18.1(b).

61. Certain daily attendance sheets for the courses offered by CSI from April 1986 through and including October 1986 contained false and inaccurate information which (a) identified three (3) instructors as having also taught three (3) courses when in fact said instructors did not teach said courses as aforedescribed in paragraphs 46 through 51 and (b) recorded signatures of two (2) students representing that said students had attended a particular course on a particular day even though said students did not in fact attend said course on the said day as aforedescribed in paragraphs 19 and 21.

62. The original daily attendance sheets for the courses aforedescribed in paragraphs 46 through 51 are attached hereto and made a part of the record hereof as Exhibit J14.

63. The permanent records maintained by CSI regarding those nine (9) students aforedescribed in paragraphs 19 and 21 contained false and inaccurate information inasmuch as the information

contained on the permanent records was predicated on a compilation of the information derived from the daily attendance sheets which information was false and inaccurate.

WHEREAS, the Division contends and Respondent Demos admits that by failing to maintain accurate daily attendance sheets as aforedescribed in paragraphs 61 and 62, Respondent Demos has violated N.J.A.C. 19:44-18.1(a)4.

AS TO DIVISION LETTER REPORT
NO. 88-CSI-18

1. On or about November 24, 1986, the Division interviewed Peter Rose (CCC Lic. No. 28914-21) who attended a course in Baccarat at CSI and graduated on November 24, 1986. Mr. Rose stated that he was absent from the course for approximately four (4) days and never made up the time. CSI's records maintained on site, however, indicate that Mr. Rose attended every session of the course. A true and correct copy of Division Investigation Report dated December 1, 1986 which recounts the Division's interview with Mr. Rose is attached hereto and made a part hereof as Exhibit J15.

2. On or about November 24, 1986, the Division interviewed Laura Beu (CCC Lic. No. 53660) who attended a course in Baccarat at CSI and graduated on October 2, 1986. Ms. Beu stated that she missed three (3) days of class on September 29, 30 and October 1, 1986 as she was giving birth. Ms. Beu stated that her instructor, James Dickey (CCC Lic. No. 1256-60), told her that she did not have to make up the class time she missed. CSI's attendance records indicate that Ms. Beu attended every session of the course. When

the Division showed Ms. Beu these attendance records, Ms. Beu indicated that the signature on the attendance sheets for September 29, 30 and October 1, 1986 was not her signature. A true and correct copy of Division Investigation Report dated December 1, 1986 which recounts the Division's interview with Ms. Beu is attached hereto and made a part hereof as Exhibit J15.

3. On or about November 24, 1986, the Division interviewed Robert Horvath, Jr. (CCC Lic. No. 4376-21) who attended a course in Baccarat at CSI and graduated on October 2, 1986. Mr. Horvath stated that he was absent from class for two (2) days and made up the time by practicing alone with cards and chips. At no time was an instructor present. Mr. Horvath also stated that he feels completely unprepared to deal the game of baccarat and could not do so unless he enrolled in another class. A true and correct copy of Division Investigation Report dated December 1, 1986 which recounts the Division's interview with Mr. Horvath is attached hereto and made part hereof as Exhibit J15.

4. On or about December 19, 1986, the Division conducted a sworn interview with William Kilduff, Jr. (CCC Lic. No. 1151-11) who attended a Roulette class at CSI and graduated on August 29, 1986. Mr. Kilduff stated that he only attended class for a total of twenty (20) hours of instruction. CSI records indicate that Mr. Kilduff made up 90 hours but Mr. Kilduff identified six (6) make-up slips which he did not prepare nor submit for time credit. The six (6) slips total 36 hours of make-up time. Mr. Kilduff admitted that even though he was required to attend a roulette course for

120 hours, he only attended class for twenty (20) hours. A true and correct copy of the sworn statement of Mr. Kilduff is attached hereto and made a part hereof as Exhibit J16.

5. On or about December 4, 1987, the Division conducted a sworn interview of James Dickey (CCC Lic. No. 1256-60), a Baccarat Instructor employed by CSI. During that interview, Mr. Dickey testified that he noted an excessive number of students in his class and brought this to the attention of Respondent Demos, then Resident Director of CSI. Mr. Dickey also testified that, instead of dividing the class into two (2) classes with another instructor, Mr. Demos offered him $3.00 per hour in additional salary to teach one class. Mr. Dickey also testified that he credited on daily attendance sheets both Peter Rose and Laura Beu for their absent class hours as a result of his own personal decision. A true and correct copy of Mr. Dickey's sworn statement is attached hereto and made a part hereof as Exhibit J17.

6. During her sworn interviews conducted by the Division on December 9, 1986 and May 18, 1988, respectively, CSI Administrative Employee Rosemary Monacello confirmed Respondent Demos' testimony as to her duties as an administrative employee of CSI and provided to the Division a list which more specifically described her duties. True and correct copies of the transcripts of Rosemary Monacello's sworn interviews of December 9, 1986 and May 18, 1988 are attached hereto and made a part hereof as Exhibit J20 and J21, respectively.

7. During her sworn interview conducted by the Division on December 9, 1986, Administrative Employee Monacello testified that for each course offered by CSI, CSI maintains on-site daily attendance sheets. The daily attendance sheets maintained by CSI included information showing the name of the course, the name of the instructor of the course, the starting and completion dates of said courses, the time of day during which the course was offered, the name of the students enrolled in the course listed in alphabetical order, a space for each student's signature, the time-in and time-out, the number of daily hours each student attended said course and the total number of hours each student attended said course.

8. During her sworn interview conducted by the Division on May 18, 1988, Respondent Monacello testified that from said daily attendance sheets, CSI compiles information pertinent to each student enrolled in a course offered by CSI. CSI then files such information with the Commission as follows:

(a) through an Enrollment Attendance ("Actual") Report filed with the Affirmative Action Section of the Commission within four (4) days of the commencement of a course [T 42-44]; and

(b) through a graduation report filed with the Licensing Division and with the Affirmative Action Section of the Commission at the completion of a course [T 45-47].

9. In the Stipulation of Settlement executed by the Division and CSI Administrative Employee Rosemary Monacello and which was

adopted by the Commission on October 5, 1988 and by Order dated November 9, 1988 as the final resolution of State v. Rosemary Monacello which bears the same docket numbers as the instant matter, Administrative Employee Monacello stipulated as fact that the inaccuracies aforedescribed in paragraphs 46 through 51 were attributed to errors in the Actual Reports filed with the Commission. Administrative Employee Monacello also stipulated that when she brought the inaccuracies aforedescribed in paragraphs 46, 47, 48 and 49 to the attention of Respondent Demos, then Resident Director of CSI, Respondent Demos instructed her not to worry about the inaccuracies as same were insignificant and not to correct the graduation reports filed with the Commission subsequent to the Actual Reports.

10. The factual stipulations of CSI Administrative Employee Rosemary Monacello are consistent with her sworn testimony as set forth in Exhibits J20 and J21 as well as with the findings of the Division's investigation of this matter.

THEREFORE, the Parties hereby make application to the Honorable Walter N. Read, Chairman, Casino Control Commission, and the Honorable Jeff Masin, A.L.J., Office of Administrative Law, for permission to submit the following Stipulation of Settlement for consideration by the Office of Administrative Law in its Initial Decision and by the Casino Control Commission as a final resolution of Complaint No. 88-94 and Report No. 88-CSI-18:

WHEREAS, the Division has caused Complaint No. 88-94 and Report No. 88-CSI-18 to be filed; and

WHEREAS, the problems raised by the Division in Complaint No. 88-94 and Report No. 88-CSI-18 have been addressed in the following manner:

(1) As a result of the December 9, 1986 Division interview of Rosemary Monacello and the January 12, 1987 Division interview of Peter G. Demos, Jr., CSI became aware of the general scope of the Division investigation which forms the basis of the pending complaint. In response to these interviews:

(a) CSI, through Respondent Demos and Ms. Monacello during December 1986 and January 1987, by written memoranda as set forth in paragraphs 28 through 29 herein, advised all CSI instructor that make-up hours may be credited only to students who "attend and properly participate in instruction or training" in the "presence" of a licensed instructor;

(b) CSI, by memorandum issued during January 1987 by Respondent Demos and Ms. Monacello, advised all CSI instructors of the maximum approved Commission student/teacher ratios set forth in December 1, 1980 letter directive of Commission analyst Bertha Scott as stipulated in paragraph 32 herein; and

(c) CSI, through letter inquiry by Respondent Demos dated January 9, 1987 and formal petition dated May 22, 1987, requested and obtained approval from the Commission on February 4, 1988, without objection from the Division, of an increase in the student/teacher ratio to 24:1 blackjack and craps classes as stipulated in paragraph 41 herein;

(d) During July 1987, CSI employee Elizabeth Rifice resigned from her position as reporting analyst/graduation coordinator and from her employment at CSI;

(e) During November 1987, CSI hired and continues to employ Marie Russo as its graduation coordinator with responsibility for filing reports with the Commission as to affirmative action composition of its classes and student course completion certifications; and

(f) Since her hiring, Marie Russo has been specifically trained by Ms. Monacello as to the revised student make-up of missed class hours policy and the current student/teacher ratio requirements and has reported and continues to report directly to Ms. Monacello on these matters.

(2) Morgan Cashman, during or about November-December 1987, in consultation with CSI counsel and CSI CPA Larry Horowitz and by agreement with then Resident Director Demos, determined to sever Respondent Demos from CSI and replace him as its resident director.

(3) On November 29, 1987, Mr. Cashman bought from Respondent Demos the interest held by Respondent Demos in the real property adjacent to the CSI facility which they had jointly acquired during 1985 and had leased to CSI for its use as a parking facility.

(4) On January 25, 1988, Mr. Cashman accepted the resignation of Respondent Demos as CSI president, director, resident director and employee.

(5) On January 25, 1988, Mr. Cashman permitted CSI to redeem all CSI stock (470 shares of 47%) held by Respondent Demos and

directed that such shares be transferred to CSI in exchange for a transfer by CSI to Respondent Demos personally (subject to existing financing obligations) of title to the 1984 automobile (odometer reading 105,000 and presently valued at approximately $11,500.00) purchased by CSI during 1984 for use by Respondent Demos while in its employ.

(6) Since January 25, 1988, Mr. Cashman has become the sole CSI shareholder and director, has continued his service as CSI secretary-treasurer and has assumed the office of CSI president.

(7) Accordingly, after more than seven (7) years as its minority shareholder, president and resident director with the direct authority and responsibility for the management of all CSI operations, Respondent Demos as of January 25, 1988 was fully and completely severed from any and all ownership of, control over and association with CSI.

WHEREAS, the Division contends and Respondent Demos admits to the aforecited regulatory violations and that Respondent Demos' commission of said violations adversely impacts upon his business ability pursuant to N.J.S.A. 5:12-89(b)3 and, therefore, the parties hereby consent to the revocation by the Commission of Respondent Demos' casino key employee license #18-11 (endorsement: pit boss-all games/credit executive); Respondent Demos' license #504-60 as Resident Director of a gaming school; and Respondent Demos' license #36-60 as a gaming school instructor in blackjack and craps; and

WHEREAS, the Parties desirous of amicably settling this litigation without the necessity of a full hearing; and

WHEREAS, the Parties submit that this Settlement as to Respondent Demos is just and equitable in light of the statutory guidelines set forth in N.J.S.A. 5:12-130; and

WHEREAS, this Settlement must be accepted by the full Commission before it becomes effective.

WHEREAS, ~~the~~ Parties agree ~~that~~ should Respondent Demos chose to reapply for licensure at the conclusion of the five year revocation period prescribed by regulation, the division shall evaluate Respondent Demos' qualifications for licensure based on his conduct during ~~that~~ five year period and not on the events which originated these proceedings.

I HAVE READ THE ENTIRE CONTENTS OF THIS STIPULATION & AGREE TO ITS TERMS.

X _____

PETER G. DEMOS

NOW, THEREFORE, BE IT RESOLVED that upon approval of this Stipulation of Settlement by the Office of Administrative Law and the Casino Control Commission, Complaint No. 88-94 and Letter Report No. 88-CSI-18 shall be deemed fully adjudicated and resolved as to Respondent Demos.

Respectfully submitted,

Peter N. Perretti, Jr.
Attorney General of New Jersey

Dated: May 19, 1989

By: _____
Fredric E. Gushin
Assistant Attorney General

Dated: May 19, 1989

By: _____
Wendy Alice Way
Deputy Attorney General

Attorneys for Complainant
Division of Gaming Enforcement

Bennington and Williams

Dated: May 19, 1989

By: _____
Alfred J. Bennington, Jr., Esq.
Attorney for Respondent
Peter G. Demos, Jr.

FEG:WAW
051289/4

_____
Peter G. Demos, Jr.

By signing, I am admitting the allegations herein, I have read this stipulation & understand its terms.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
ORDER NO. 89-39-9

IN THE MATTER OF THE 1989 CASINO LICENSE RENEWAL APPLICATION OF ATLANTIC CITY SHOWBOAT, INC.	:	
REQUEST FOR RECONSIDERATION OF ORDER NO. 89-65 (PRN 139902) (SECURITY HOLDINGS OF DREXEL BURNHAM LAMBERT, INC.)	:	ORDER

The Casino Control Commission (Commission) having entered on March 9, 1989, Order No. 89-65, which required that Atlantic City Showboat Inc., Ocean Showboat Finance Corporation and Showboat, Inc. take all necessary and appropriate actions to have Drexel Burnham Lambert, Inc. and Drexel Burnham Lambert Group, Inc. (hereinafter jointly referred to as "Drexel") divest its several interests in Showboat, Inc. and Ocean Showboat Finance Corporation securities by April 2, 1989; and

The Superior Court, Appellate Division, having remanded the matter to the Commission for reconsideration of whether Drexel is a financial source or qualifier of Atlantic City Showboat, Inc. within the meaning of the Casino Control Act; and

The Commission having granted at its September 27, 1989, public meeting Atlantic City Showboat, Inc.'s request for reconsideration of Order No. 89-65; and

The Commission having further decided at its September 27, 1989, public meeting to modify Order No. 89-65, in part, and to leave the remainder undisturbed, for the reasons set forth on the

record of the September 27, 1989, meeting and in the attached opinion of the Commission;

IT IS HEREBY on this 2nd day of November 1989 ORDERED that Commission Order No. 89-65 be modified to eliminate the need for Ocean Showboat Finance Corporation to take all necessary and appropriate actions to have Drexel divest its interest in Ocean Showboat Finance Corporation bonds, but that the remainder of Commission Order No. 89-65, requiring the divestiture of Showboat, Inc. common stock and Showboat, Inc. debentures held by Drexel, and prohibiting Drexel's receipt of any dividends or interest or its exercise of any rights conferred by such securities, as required by N.J.S.A. 5:12-105(e), remain in full force and effect.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 89-39-9

IN THE MATTER OF THE 1989 CASINO LICENSE RENEWAL APPLICATION OF ATLANTIC CITY SHOWBOAT, INC.	:	
REQUEST FOR RECONSIDERATION OF ORDER NO. 89-65 (PRN 139902) (SECURITY HOLDINGS OF DREXEL BURNHAM LAMBERT, INC.)	:	OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chair
Valerie H. Armstrong, Vice-Chair
E. Kenneth Burdge, Commissioner
W. David Waters, Commissioner
Frank J. Dodd, Commissioner

Appearances*:

For Atlantic City Showboat, Inc:
Thomas C. Bonner, Esq.

For the Division of Gaming Enforcement:
Thomas N. Auriemma, Deputy Attorney General

Atlantic City Showboat, Inc. (A. C. Showboat), a casino licensee, has requested reconsideration pursuant to N.J.S.A. 5:12-107(d), of Commission Order No. 89-65, which required that A. C. Showboat, its holding company, Showboat, Inc. (Showboat), and its sister company, Ocean Showboat Finance Corporation

*The day prior to the hearing, counsel for Drexel Burnham Lambert, Inc. and Drexel Burnham Lambert Group, Inc. (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, et al.) advised that they would attend the hearing and be available to answer any questions the Commission may have, but would not enter a formal appearance in this matter.

(Finance) take all necessary and appropriate actions to have Drexel Burnham Lambert, Inc. and Drexel Burnham Lambert Group, Inc. (hereinafter collectively referred to as "Drexel") divest its several interests in Showboat and Finance by April 2, 1989.[1]

Initially, the Casino Control Commission finds that A. C. Showboat has satisfied the requirements of N.J.S.A. 5:12-107(d)(2) for reconsideration of this matter.

The reconsideration request concerns three types of A. C. Showboat-related securities, namely: Finance 11-3/8% mortgage-backed bonds; Showboat 13% debentures; and Showboat common stock held by Drexel at the time of A. C. Showboat's casino license renewal hearing, and in varying amounts since that date.

Turning first to the 11-3/8% mortgage-backed bonds of Finance held by Drexel, it appears from the record before the Commission, that Drexel held only a nominal amount of these bonds, all for customer accounts, at the time of the A. C. Showboat casino license renewal hearing. This Commission has found on numerous occasions, that not all holders of freely-traded and widely distributed debt instruments issued by sister subsidiaries of casino licensees need be qualified as financial sources under N.J.S.A. 5:12-84(b). In the Matter of

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[1]Drexel had previously appealed Commission Order No. 89-65 to the Superior Court, Appellate Division (Appellate Division). At the request of Drexel, the Appellate Division granted a limited remand of this matter to the Commission to allow A. C. Showboat to apply for reconsideration of the question of whether Drexel is a financial source or qualifier within the meaning of the Casino Control Act.

the Petition of Bally Manufacturing Corporation and Bally's Park Place, Inc. for a Declaratory Ruling with Respect to the Continued Waivability of the Bondholders of Bally's Park Place Funding, Inc., Casino Control Commission Public Meeting No. 87-26 (July 8, 1987) Transcript at 16-46; In the Matter of the Petition of Greate Bay Hotel and Casino, Inc. and Pratt Hotel Corporation for Approval of a Financing Transaction and Other Relief, Casino Control Commission Public Meeting No. 87-26 (July 8, 1987) Transcript at 46-60.

From the more recent information provided by A. C. Showboat concerning Drexel's holdings as of July 18, and September 9, 1989, it appears that Drexel did not hold any Finance bonds on either of those dates. More importantly, after the stay of the March 9, 1989, order in this case, the Commission ruled that Drexel would not have to qualify with respect to the Trump Plaza Funding, Inc. and Trump's Castle Funding, Inc. bonds held by Drexel solely for customer accounts, Casino Control Commission Public Meeting No. 89-19 (May 10, 1989) Transcript at 70-74. Based upon that ruling, the Commission would not have required Drexel to qualify as a financial source pursuant to N.J.S.A. 5:12-84(b) in connection with A. C. Showboat's casino license renewal hearing, due solely to Drexel's holding only a minute amount of Finance bonds, all in its customer accounts.

With regard to Drexel's holdings of Showboat 13% debentures and Showboat common stock, it appears that Drexel held, at the time of A.C. Showboat's casino license renewal hearing only nominal amounts of each. Further, from the record, it appears

that at various times these holdings were for customer and employee accounts and that Drexel has had discretionary control over some of these accounts. This discretionary control has, at various times, given Drexel both dispositive power and voting rights over these securities. Additionally, although the various stock exchanges provided detailed rules concerning a broker/dealer's responsibility to solicit the account holder's directions with respect to the voting of securities, only the record holder, here Drexel, may vote them. Thus, Drexel enjoys legal ownership of all the securities and some beneficial interests as well.

Since Showboat is a corporate holding company, see N.J.S.A. 5:12-26, of A. C. Showboat, the provisions of N.J.S.A. 5:12-85(d)(1) apply. Specifically, N.J.S.A. 5:12-85(d)(1) requires that Showboat, as a holding company, must comply with the provisions of N.J.S.A. 5:12-85(c) of the Casino Control Act ("Act"), as if Showboat, itself, were a casino licensee. Similarly, the pertinent language of N.J.S.A. 5:12-85(c) provides "[n]o corporation shall be eligible to hold a casino license unless . . . each person who directly or indirectly holds any beneficial interest or ownership of the securities issued by the corporation; . . . would, but for residence, individually be qualified for approval as a casino key employee pursuant to the provision of this act." N.J.S.A. 5:12-85(c) (emphasis supplied). However, the Commission, with the concurrence of the director of the Division of Gaming Enforcement (director), may waive compliance with N.J.S.A. 5:12-85(c) on the part of a

publicly-traded holding company, in this instance, Showboat, as to any "person directly or indirectly holding a beneficial interest or ownership of the securities of such corporation, where the commission and the director are satisfied that such officer, director, lender, underwriter, agent or employee is not significantly involved in the activities of the corporate licensee, and in the case of security holders, does not have the ability to control the publicly-traded corporation or elect one or more directors thereof." N.J.S.A. 5:12-85(d)(1) (emphasis supplied).

A. C. Showboat has requested that the Commission join the Division in waiving the qualifications of Drexel, pursuant to N.J.S.A. 5:12-85(d)(1) with respect to its record ownership securities of Showboat and Finance. The Division has argued that Drexel does not appear to have any beneficial ownership of Showboat stock, and thus, its qualification is not required pursuant to N.J.S.A. 5:12-85(d)(1).

Clearly, N.J.S.A. 5:12-85(d)(1) is written in the alternative, so that a person holding either a beneficial interest or ownership is required to qualify, unless the person's qualification is waived. From the record before us, it is evident that Drexel is the record owner of the securities in question and this record ownership, by itself, is sufficient to mandate its qualification. Further, Drexel, as the legal owner of the Showboat debentures and common stock is obviously "a person holding" these securities. This plain wording of th

pertinent language is also entirely consistent with the strict regulatory policy enunciated by the Act.

In this regard 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 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.

The courts of New Jersey have repeatedly recognized that the Act expressly mandates extraordinary regulation of the casino industry. In re Boardwalk Regency Corp. Casino License Application, 180 N.J. Super. 324, 341 (App. Div. 1981), aff'd as mod., 90 N.J. 361 (1982), app. dism. sub nom., Perlman v. Attorney General, 459 U.S. 1081, 103 S. Ct. 562, 74 L. Ed. 2d 927 (1982); In the Matter of Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 327 (App. Div.), certif. den., 102 N.J. 352 (1985). Along these same lines, the Supreme Court of New Jersey has recognized that "[t]he act vests broad power over casino operations in the Commission." Bally Mfg. Corp. v. N.J. Casino Control Comm'n., 85 N.J. 325, 328, app. dism., 454 U.S. 804 (1981). Obviously, inclusion of record or legal holders of securities as persons to be qualified pursuant to N.J.S.A. 5:12-85(d)(1) best serves the policies of the Act, including those which require that the Commission insure and maintain the public's confidence and trust in the regulatory process.

As to whether Drexel also has a "beneficial interest" in Showboat securities, the Commission has historically found that voting and dispositive rights, as well as economic benefit, constitute indicia of beneficial ownership for purposes of the qualification requirement of N.J.S.A. 5:12-85(d)(1). In the Matter of the Petitions of Marina Associates and Holiday Corporation (PRN 288802) and In the Matter of Boardwalk Regency Corporation and Caesars World, Inc. (PRN 041903) Concerning Waiver of Qualification of Harris Associates, L. P. and In the Matter of the Petition of Marina Associates and Holiday Corporation to Waive the Qualification of Alliance Capital Management, L. P., (PRN 307802) Casino Control Commission Public Meeting No. 89-28 (July 12, 1989) Transcript at 83-131 and No. 89-32 (August 9, 1989) Transcript at 96-147; In the Matter of the Petition of New Coast, Inc. for Approval of a Merger and for Other Relief (PRN 046408) Casino Control Commission Opinion, April 30, 1984 (hereinafter In re New Coast). The Commission sees no reason to depart from this precedent.

For these reasons, it is the Commission's opinion that Drexel is a mandatory qualifier with respect to its legal and beneficial holdings of Showboat debentures and stock, pursuant to N.J.S.A. 5:12-85(d)(1), unless its qualification is waived by the Commission, with the concurrence of the Director of the Division.[2]

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[2]Drexel's interest in the debt securities of a holding company (footnote continued)

With regard to A. C. Showboat's request that the Commission waive the qualifications of Drexel as the record owner of the Showboat securities, the Commission agrees that Drexel's holdings of Showboat debentures and common stock are minute, when compared to the total number of shares or debentures outstanding. There is no evidence that Drexel can be significantly involved in the activities of A. C. Showboat, or that Drexel has the ability to control Showboat or elect one or more directors through these securities. See N.J.S.A. 5:12-85(d)(1). However, the decision whether to waive is not based solely on the ability of the security holder to influence or control the issuer. Rather, the Commission "may" decide to waive based on all relevant circumstances and the policies of the Act.

Under N.J.S.A. 5:12-105(d), an unqualified person must divest his entire interest in the casino licensee or any holding or intermediary company, not just the specific amount of securities necessary to reduce the person's holdings to under five per cent of the outstanding securities. Moreover, pursuant to N.J.S.A. 5:12-105(d), a casino licensee may seek to avoid license revocation due to an unqualified owner of the publicly-traded securities of a holding company if three

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(footnote continued)
cannot be treated similarly to its holdings of debt securities of a sister subsidiary because N.J.S.A. 5:12-85(d)(1) requires that all holders of debt securities of a holding company must qualify, unless the holder's qualifications are waived by the Commission, with the concurrence of the Director of the Division. As discussed above, the analysis for public debt securities of a sister subsidiary is significantly different.

conditions are satisfied. One of the conditions for the "escape clause" is that the security holder is unable to exert influence or control over the issuer. Plainly, unless a non-controlling shareholder can be required to qualify, the "escape clause" would be meaningless, since the only group eligible under the clause, non-significant holders, would be entitled to a waiver under N.J.S.A. 5:12-85(d)(1) and, therefore, the need for the "escape clause" would never arise. An interpretation which renders any part of a comprehensive enactment superfluous is clearly disfavored. Moreover, the Interim Casino Authorization (ICA) legislation, N.J.S.A. 5:12-95.12 through 95.16, applies to the entire interest of an ICA applicant. Specifically, N.J.S.A. 5:12-95.14(a)(1) and (a)(2) require that all of the ICA applicant's interest be placed in an ICA trust. There is no minimum amount which is permitted to remain with an unsuitable holder.

In fact, in a similar situation the Commission refused to waive the qualification of Princeton/Newport Arbitrage Partners (Princeton/Newport), which held nominal amounts of securities of Bally Manufacturing Corporation, a holding company of casino licensees, Bally's Park Place, Inc. (BPP) and GNOC, CORP. (GNOC), at the 1988 BPP and GNOC casino license renewal hearing, pursuant to N.J.S.A. 5:12-85(c) and (d)(1), based upon a federal indictment of certain partners and employees of Princeton/Newport Partners, L.P., an affiliate of Princeton/Newport, for racketeering and mail and wire fraud involving securities trading

in the accounts of Princeton/Newport and other affiliates. Bally's Park Place, Inc., and GNOC, CORP. 1988 Casino License Renewal Hearing, Casino Control Commission Public Meeting (September 1, 1988) Transcript at 28-29. We see no reason to distinguish A. C. Showboat's request for the waiver of qualification of Drexel, from BPP and GNOC's request for the waiver of qualification of Princeton/Newport.

Drexel has been found unsuitable to hold any position that requires qualification, based upon Drexel's then-alleged fraud in connection with the purchase and sale of six publicly-traded securities, including the securities of Golden Nugget, Inc., a former holding company of GNOC, CORP., a casino licensee. In the Matter of the Casino Service Industry License Application of Drexel Burnham Lambert, Inc., Casino Control Commission Order No. 89-8-22, February 24, 1989. More recently Drexel pled guilty to six counts of mail and securities fraud.

To continue to allow Drexel to hold debt or equity securities of a holding company of a casino licensee, in light of its criminal history, would be contrary not only to the explicit terms of the Act but also to the public's confidence and trust in the Commission's ability to regulate closely the sensitive casino industry. N.J.S.A. 5:12-1(b)(6), (7), (8) and (9). Indeed, N.J.S.A. 5:12-1(b)(9) specifically provides that the Commission

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[3]In the Princeton/Newport matter, the director would not concur in a waiver of the qualifications of Princeton/Newport in view of the federal indictment, N.J.S.A. 5:12-85(d)(1).

is to protect the interests of the State of New Jersey ". . . and since it is vital to the interest 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 the law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act." N.J.S.A. 5:12-1(b)(9) (emphasis supplied); In re Boardwalk Regency Corp. Casino License Application, 180 N.J. Super. at 340-343, 344-345; In the Matter of Hotel and Restaurant Employees and Bartende International Union Local 54, 203 N.J. Super. at 327. As the Commission stated in its New Coast decision, "[t]he Casino Control Act establishes an 'extraordinary pervasive and intensive' system of regulation, Knight v. City of Margate, 86 N.J. 374, 381 (1981), designed to oversee and control all aspects of the casino industry with the 'utmost strictness.'" Id. at 392, citing Bally Mfg. Corp. v. N. J. Casino Control Comm'n., 85 N.J. 325 (1981), app. dism., 454 U.S. 804 (1981); In re Martin, 90 N.J. 295 (1981); Uston v. Resorts International Hotel, Inc., 89 N.J. 163 (1982). In re New Coast at 28. Obviously, the Commission cannot ignore the dictates of the strict regulatory system established by the Legislature in considering A. C. Showboat's request for the waiver of qualification of Drexel a the record holder of Showboat securities.

Since the waiver of qualification of a security holde pursuant to N.J.S.A. 5:12-85(d)(1) is a discretionary action o the part of the Commission, and in view of Drexel's crimina history, the Commission will not grant A. C. Showboat's request for a waiver of Drexel's qualification.

WALTER N. READ, Chair

VALERIE H. ARMSTRONG, Vice-Chair

W. DAVID WATERS, Commissioner

E. KENNETH BURDGE, Commissioner

FRANK J. DODD, Commissioner

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-192
LICENSE NO. 41905-21
OAL DOCKET NO. CCC 2671-88;
CCC 9144-88 (ON REMAND)
ORDER NO. 89-35-10

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
DORIS E. DUNSTON

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and exceptions having been filed by both parties; and the applicant having filed a motion for stay of the Commission's determination in this matter; and the Commission having considered the entire record of these proceedings at its public meetings of August 16 and 30, 1989,

IT IS on this 1ST day of September 1989, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's determination that the applicant committed the offense of unsworn falsification to authorities contrary to N.J.S.A. 2C:28-3(b)(1). Bally's security personnel to whom the applicant made the false statement are not "public servants" which is an essential element of the offense;

(2) to reject the ALJ's determination to the contrary and find from this record that the applicant committed theft by unlawful taking in violation of N.J.S.A. 2C:20-3, a disorderly persons offense;

(3) to find, upon consideration of all the rehabilitation factors particularly the seriousness and circumstances of the offense including the applicant's duplicitous efforts to conceal her wrongdoing, that the applicant is disqualified pursuant to section 86(c)(2); and

(4) to adopt the ALJ's conclusion that the applicant failed to establish her good character, honesty and integrity, but note that such finding is based upon the seriousness with which a theft from a patron must be viewed, together with the importance which must be placed upon the applicant's willful conduct designed to frustrate the investigation into the theft by casino security personnel.

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference;

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

IT IS FURTHER ORDERED that the applicant's motion for stay is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-192
LICENSE NO. 41905-21
OAL DOCKET NO. CCC 2671-88;
CCC 9144-88 (ON REMAND)
ORDER NO. 89-35-10

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
DORIS E. DUNSTON

ORDER

The applicant having filed an emergent motion for relief from the Casino Control Commission determination on August 30, 1989, which in addition to denying her application to renew her casino employee license, precluded her from applying for a casino hotel employee registration; and the Division of Gaming Enforcement having opposed said motion; and the Commission having considered the entire record at its public meeting on the same date; and a motion having failed to gain the vote of the majority of the Commission,

IT IS on this 1ST day of September 1989, ORDERED that the motion is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9144-88

AGENCY DKT. NO. 88-EA-192

DORIS E. DUNSTON,

Petitioner,

v.

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

Respondent.

Doris E. Dunston, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 20, 1989 Decided: June 21, 1989

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE

Doris Dunston (petitioner or applicant) has applied for renewal of her casino employee license (gaming) pursuant to N.J.A.C. 5:12-86, 89, 90 and 107 and the Division of Gaming Enforcement objects on the basis of an incident on April 13, 1985, in which the applicant was alleged to have taken an unspecified amount of money from a patron in the slot machine area of Bally's Park Place Hotel/Casino. Dunston claimed to DGE that she had found the money on the slot machines and had placed it in a locker for safe keeping. Security officers allegedly recovered $63 in $1 tokens. No criminal charges were filed, following the return of tokens to the patron. The Applicant is currently employed at the Claridge.

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Hotel/Casino. She requested a hearing on November 16, 1988 and the matter was referred to the Office of Administrative Law on December 16, 1988 for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on April 20, 1989 at which time the record closed. The time for submission of an initial decision was extended until June 22, 1989 for reasons not relevant to this case.

ISSUES

1. Whether the conduct of the Applicant involving the taking of the tokens from a patron in April 1985 renders her licensure inimical to the policies of the Casino Control Act notwithstanding the fact that the act was not prosecuted. See, N.J.S.A. 5:12-86(c)(2),(g);

2. Whether the Applicant can establish by clear and convincing evidence her good character, honesty and integrity as required for licensure under N.J.S.A. 5:12-89(b) as per 5:12-90(b).

FINDINGS OF FACT

Petitioner Doris E. Dunston started working the Casino industry in the summer of 1981, when she got a job as a public area attendant with the United Company, which then had a cleaning contract with Bally's Park Place Hotel and Casino. She subsequently became an "in-house" employee of Bally's in 1982 or 1983 and was considered to be an casino employee working under a license issued by the Casino Control Commission (CCC) (T-8). Her job at Bally's was to clean the slot area, including the quarter, dollar and fifty cent sections. United had no formal policy for disposing of money left behind by patrons, but the company was "relaxed" and Ms. Dunston was under the impression that she could keep what she found in the slots, provided it was not "big money" and the casino was closed or closing (T22 to 23). Ms. Dunston stated that she would, however, have left alone or turned in fifty or one hundred dollars in tokens if patrons were still playing in the area of slot machines where she was working (T24, 7-11). There was no evidence introduced to show that Bally's had any formal policy of "finders-keepers" (T11), or requiring the cleaning staff to turn in such found money.

On April 13, 1985, Petitioner was cleaning the slots on the midnight to 8:00 am shift. At approximately 12:31 p.m. a patron in the "P" [progressive] slot area complained that a public area attendant had taken a cup containing 65 to 70 dollar tokens from behind a fifty cent slot which she was playing. Bally Security was contacted and interviewed the victim, who claimed tht a cleaning woman had approached her, asked if the cup of coins was hers, and then, after being advised that it was, made off with the tokens (unbeknownst to the victim) (R-3). The victim later claimed that $135 in tokens had been taken, but ultimately stated that the cup was only one third full and contained approximately $65 in dollar tokens.

Ms. Dunston, who was working in the "P" slot area at the time, was questioned by Security and, initially, denied in a written statement that she had taken a cup of tokens from the second area of the progressive slots:

> I was cleaning slots in the second progressive slots when I found a pack of cigarettes asking the near lady to them if they were her's. Upon her negative reply I proceeded to clean the area. I came around the quarter slots in the isle where I told the guard Audrey I was going to remove my sweater. Upon return to my section I was told I was accused of taking a cup of money. At no time did I remove any cup from this section (R-1; emphasis added).

Petitioner verbally gave essentially the same statement to Lt. P.K. Smith (R-3), who subsequently checked her locker and found no tokens. At approximately 5:45 a.m. a "confidential source" advised Lt. Smith that Ms. Dunston had indeed taken the coins and had asked a friend to place them in her locker for safekeeping (Ibid). The tokens were located in the locker of the "friend," (Remel Terry) who initially denied any knowledge of them. Lt. Smith again interviewed Ms. Dunston and noted in his report that:

> I then showed her the tokens and informed her that they had been found in Terry's locker. At this point Dunston admitted her involvement. She stated that she had found the tokens unattended and taken them first to the ladies room and them to her locker. After being questioned the first time by him she took a break and asked Terry to hold them for her. Terry then placed them inside of her own locker . . . (R-3 at 2; emphasis added).

Remel Terry, Ms. Dunston's co-worker, later admitted that she had lied to protect the Petitioner (Ibid). Ms. Dunston also provided a second statement:

> This is a true statement resolving Remel Terry of any wrong doing. All she did was help a friend out. I found the money in the slots - there was no one around. I then took the coins to my locker. After being questioned by security I gave them to Mel for safe keeping. This statement void all other previous ones (R-2; emphasis added).

At the hearing, petitioner gave the following account of the incident on April 13, 1985. On that occasion, she was on the midnight shift and was cleaning the "right hand side of the palace" in the slot areas when she found a cup of dollar tokens in the dollar slot section (T9-10). She states that she took the money out of the cup and put it in her pocket and continued to clean the dollar section. Still carrying the tokens, she moved on to the fifty cent section and encountered a woman near a pack of cigarettes in a Bally's cup and inquired as to whether they belonged to the woman and was advised that they did not. She moved on down the row and then determined to remove the sweater which she was wearing and advised the guards that she was going to the bathroom for that purpose. She didn't, at this time, put the tokens in her locker, but transferred them to a bag containing a pair of gloves. When she returned to the floor, she was contacted by Security which stated that a woman had claimed that Petitioner had stolen some of her money. According to Ms. Dunston, the woman was inebriated and could not identify her as the thief; She also did not recognize the woman. After her initial conversation with Security, during which she had the tokens in her possession, the petitioner went to her friend Remel Terry and asked her to put the tokens in her locker for safe keeping. Ms. Dunston's reaction to the allegation of theft was "I said darn, the first time I ever find anything here comes this lady and says that she lost a cup of money" (T-13, 6-8). As far as the Petitioner can remember, the cup did not contain $63 when she found it, and she claims that she mingled the tokens with other coins found by her that evening. Her intention was to cash the tokens in the next day, when the casino reopened. When asked whether she thought the money might have belonged to someone else she answered:

> No, because I would have thought if somebody else had left the money there they would have come back. The first time I went around I left the money there and I came back again and it was still there, so I said well, no one has come back, and it was an empty slot area where I was working at the time (T17, 4-11).

Petitioner claims that the written statement by Lt. P.K. Smith is, in part, a "fabrication" in that she denies that she ever spoke to the woman reporting the theft, because she "couldn't even speak to anyone because the lady was so drunk she was laying all over the floor" (T18, 12-25; T24). Ms. Dunston also claimed that the woman to whom she had spoken to in the fifty cent section was not the woman who reported the theft (T25, 6-15). Petitioner claims that her written statement in exhibit R-1 that she at no time removed a cup of money from the section referred only to the fifty cent section, and not the dollar section, where she found the cup of coins. She claims that her second statement to security (R-2) was intended only to exonerate her friend, Remel Terry, and was not intended to retract or alter her statement (T31-32). In answer to a question as to why she had not put the cup of tokens in her locker, petitioner claimed that she asked her friend Remell Terry to use her locker because she was less busy, but Ms. Dunston also concedes that she knew that security had already been through her locker before she gave the first statement denying that she had found the cup of tokens (T34). She claims that she did not ask Ms. Terry to store the money in order to conceal it from security, but merely because it was more convienent (T34, 21-25). Ms. Dunston also stated that she was basically a very honest person and that "[i] f I had thought that this was this lady's money, I would have given it to her, because that was the way I was raised. I was not trying to mislead you and I didn't misled Bally's security about it. I didn't speak to this lady, I didn't see this lady, I didn't take this lady's money. I am sorry if you feel that I did, but I didn't. I know what is right and wrong" (T-41, 10-18).

Petitioner currently works at the Claridge Hotel and Casino and presented four letters of reference from her current casino supervisors, who all testified that she is an outstanding, reliable employee and honest (A-1-A-5). She also submitted a letter from Mr. David P. Richardson, Jr., a member of the House of Representatives of the Commonwealth of Pennsylvania, attesting to her reputation as a peaceful, law-abiding citizen (A-5). On cross-examintion it was admitted that neither Petitioner's casino supervisors nor her legislature representative, knew the particular details of her termination at Bally's involving the alleged theft of a patron's tokens.

The Division did not present any testimony from the victim of the theft, to whom the money was returned and who declined to press criminal charges. Nor was any

testimony presented by DGE from security officers at Bally's including Lt. P.K. Smith, whose report contains no indication that the victim positively identified the Petitioner as the culprit. Indeed, Lt. Smith noted that the victim was not told from whom the money had been recovered (R-3 at 2).

There is no dispute as to the above facts, except as indicated below. On the basis of the Petitioner's testimony, which is corroborated by Lt. Smith's report, I **FIND** as a matter of fact that the victim of this alleged theft did not positively identify the petitioner as the cleaning person who made off with her cup of tokens. I also note that the "victim" was observed by the Petitioner to be in a state of extreme intoxication, and later inflated the amount of the lost coins to $135. Ms. Dunston does not dispute providing two written statements to security, subject to her explanation as to why she did so.

DISCUSSION AND CONCLUSIONS

(1) Inimicality

The Division argues that the offense of taking $63 in tokens from a patron, even if not prosecuted, indicates that the continued licensure of the applicant would be inimical to the policy of the act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2)(g). Specifically, the Division argues that Ms. Dunston's conduct was tantamount to a theft offense as proscribed by N.J.S.A. 2C:20-3. Although there is little question that such an offense, if it occurred, would indeed be inimical within the meaning of that section, there is insufficient evidence in this case to conclude that the Petitioner committed theft within the meaning of N.J.S.A. 2C:20-3. In particular, there is no statement from the victim or other evidence identifying Petitioner as the thief. There is no dispute that the Petitioner took a cup of tokens from the slot area, and asked a friend to store it in the friend's locker after Petitioner had given what was, at best, a misleading statement to Security. But the fact that the petitioner acted to conceal the money, after learning that there was a claim of theft is not necessarily inconsistent with her testimony that she found the cup of tokens unattended in the slot area. Bally's policy as to such

"found money" was unclear at best and the petitioner credibly claims that she was still acting under the informal "finders - keepers" practice of the United Company. Under these circumstances, I **CONCLUDE** that the Division has failed to establish the elements of a theft offense under N.J.S.A. 2C:20-3.

Neverltheless petitioner's action in giving a false statement to Bally's Security does constitute an unsworn falsification to authorities in that it was a written false statement which she knew not to be true. N.J.S.A. 2C:28-3(b)(1). I am not persuaded by her claim that her initial statement denying that she took the money was indeed true. Her subsequent admission that she took the money states that "this is a true statement" and is more credible than the first statement of denial given (See, R-1; R-2). I therefore **CONCLUDE** that the applicant committed the offense of submitting an unsowrn falsification to authorities within the meaning of N.J.S.A. 2C:28-3, which is a disorderly persons.

In assessing the claim that Petitioner's continued licensure would be inimical because of this offense, the Casino Control Commission must also consider the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h which have been held to be subsumed within the concept of inimicality. In determining whether rehabilitation has been shown, the Commission must review the following factors:

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

The nature and duties of the position applied for involve general cleaning responsibilities on the casino floor and do not, in the regular course of that job, involve the handling of money or tokens, although it does require some contact with patrons having money in their possession (factor 1). The conduct of submitting an unsworn falsification to Bally's Security employees was serious in that it obstructed or attempted to obstruct an investigation into the alleged theft of a patron's slot tokens. The false statement, which was an isolated and not repeated incident, was given by the Petitioner after being questioned by security officers in connection with an alleged theft and was most likely intended by her to mislead the investigators and to keep the tokens she found, which she had a friend store in her locker (factors 2 to 6 of N.J.S.A. 5:12-90h). (I neglected to determine the applicant's age at the time of the conduct: she now appears to be in her late thirties). She cites no social conditions contributing to the conduct (factor 7). In terms of evidence of rehabiliation, she offers her unblemished work record at the Claridge Hotel and Casino as attested to by her supervisors (factor 8).

On the basis of the petitioner's untarnished work record both before and after this unrepeated incident in 1985, I **CONCLUDE** that her continued licensure would not be inimical within the meaning of N.J.S.A. 5:12-86(c)2, g. While the conduct in submitting a false statement was serious, it was a momentary lapse of judgment by the Petitioner, who intended to keep what apparently she had found on the casino floor. Under these circumstances, and given her otherwise unblemished record, she is not disqualified by the operation of N.J.S.A. 5:12-86c(2). However, she must also establish her good character, honesty and integrity.

(2) Good Faith, Honesty and Integrity

In order to qualify for a casino employee license, an Applicant must "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." See, N.J.S.A. 5:12-89b(2) and 90b. The applicant thus must establish good character, honesty and integrity as a matter of fact by clear and convincing evidence and not merely as a matter of reputation, See, Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 369 (1982), appeal dismissed, 459 U.S. 1081 (1982). Applicants have been

found to lack good character, honesty and integrity as a matter of fact where there was evidence that they have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation or swindling casino patrons by altering dice. See, e.g., Alter v. Div. of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Div. of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983). These examples are not exclusive and each case must be examined on its particular merits.

The requirement that an applicant establish good character, honesty and integrity by clear and convincing evidence is imposed by N.J.S.A. 5:12-90b and goes beyond the Threshadd requirement that an applicant not be disqualified by inimical conduct under N.J.S.A. 5:12-86c(2)g. In this instance, although the petitioner's licensure might not be inimical to the policy of the Act and to casino operations, so as to preclude registration of the petitioner, I **CONCLUDE** that she has failed to establish her good character, honesty and integrity by clear and convincing evidence because of her conduct in submitting unsworn falsification to obstruct an investigation and, in attempting to conceal tokens taken from the casino floor. These actions were intentional, and designed to mislead security officers investigating the alleged theft. While petitioner has shown sufficient rehabilitation to reasonably support a conclusion that she is not statutorily disqualified from registration under the Act, conduct of this kind precludes a finding that she has met the requirements of N.J.S.. 5:12-89(b)(2), 90b. It may be, as the Petitioner claims, that she is basically a very honest person who acted in an innocent manner on April 13, 1985, which is now being misconstrued, but the facts submitted establish that she engaged in conduct to thwart an investigation into a patron's claim of theft and she thus has failed to establish the requisite good character, honesty and integrity for renewal of her casino employee license.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the application of Doris E. Dunston for renewal of her casino employee license is **DENIED.**

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

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

6.21.89
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6/21/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

6/26/89
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

For Petitioner

Doris Dunston

LIST OF EXHIBITS

For Petitioner:

P-1 Letter of reference from Joseph Glover, Manager of Environmental Services, Trump's Castle Hotel and Casino, dated June 10, 1988

P-2 Letter of reference from Carol Lewis, Security Officer at the Claridge Hotel and Casino, dated May 30, 1988

P-3 Letter of reference from Patricia Belgrave, Environmental Services Shift Supervisor at the Claridge Hotel and Casino, dated April 19, 1989

P-4 Letter of reference from Nancy Williams, Environmental Services Shift Supervisor at the Claridge Hotel and Casino, dated April 19, 1989

P-5 Letter of reference from David P. Richardson, Jr., from the Pennsylvania House of Representatives, dated June 13, 1988

For Respondent:

R-1 Ms. Dunston's written statement to Bally's

R-2 Ms. Dunston's written statement to Bally's

R-3 Incident report prepared by Bally's, dated April 14, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-192
APP. DIV. DOCKET NO. A-197-89-T3

APPLICATIONS OF DORIS E. DUNSTON TO

RENEW HER CASINO EMPLOYEE LICENSE

OPINION

Morton Feldman, Esq., appeared on behalf of Doris E. Dunston

Ralph Fusco, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement (DGE)

INTRODUCTION

This matter arises out of the renewal applications of Doris E. Dunston (applicant) for her casino employee license pursuant to sections 89, 90 and 95 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.[1] By order dated September 1, 1989, the Casino Control Commission (Commission) modified the initial decision filed by the Office of Administrative Law (OAL) as to certain conclusions of law, but otherwise adopted it and denied the application for renewal of licensure. The applicant filed an appeal to the New Jersey Superior Court, Appellate Division. The Commission issues this opinion pursuant to R. 2:5-1(b).

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1. Various provisions of the Act may be cited by section number only, omitting the prefix, "N.J.S.A. 5:12-."

PROCEDURAL HISTORY

Doris E. Dunston was licensed by the Commission as a casino employee in February 1983 for a period of three years. Thereafter she filed for 1986-1989 renewal. By letter dated February 11, 1988, the DGE objected to the renewal application based upon her alleged theft of $63 in tokens from a casino patron on April 13, 1985, while she was employed at Bally's Park Place (Bally's) as a public area attendant. Ms. Dunston requested a hearing and the case was transmitted to the OAL. She failed to appear at the hearing scheduled for October 11, 1988. Following the issuance of an initial decision, the applicant appeared at the Commission's public meeting of November 16, 1988, and requested another opportunity for a hearing. The Commission remanded the case to the OAL where a hearing was held on April 20, 1989. Prior to the hearing, the applicant filed her 1989-1992 renewal application.

On June 21, 1989, the Administrative Law Judge (ALJ) filed an initial decision (copy appended as A-1 through A-11 and incorporated here as if set forth in full) in which he recommended denial of the renewal application. The ALJ found that the DGE presented insufficient evidence to conclude that the applicant committed theft pursuant to N.J.S.A. 2C:20-3. However, the ALJ found that the applicant committed the offense of unsworn falsification to

authorities pursuant to N.J.S.A. 2C:28-3(b)(1) for giving false statements to Bally's security officers. Based upon his analysis of the rehabilitation criteria contained in section 90(h) of the Act, the ALJ concluded that the offense was not disqualifying under section 86(c)(2). Nevertheless, the ALJ concluded that the applicant failed to establish her good character, honesty and integrity by clear and convincing evidence and recommended denial.

Both the applicant and the DGE filed exceptions to the initial decision. A four-member Commission considered the entire record at its public meeting of August 16, 1989. A motion to modify the initial decision and deny licensure did not garner a second and the Commission determined to reschedule the case for consideration by a full five-member body.

At the public meeting of August 30, 1989, with all five Commissioners in attendance, the Commission modified the initial decision to:

> (1) reject the ALJ's determination that the applicant committed the offense of unsworn falsification to authorities contrary to N.J.S.A. 2C:28-3(b)(1). Bally's security personnel to whom the applicant made the false statements are not "public servants" which is an essential element of the offense;
>
> (2) reject the ALJ's determination to the contrary and find from this record that the applicant committed theft by unlawful taking of $63 in violation of

N.J.S.A. 2C:20-3, a disorderly persons offense;

(3) find, upon consideration of all the rehabilitation factors particularly the seriousness and circumstances of the offense including the applicant's duplicitous efforts to conceal her wrongdoing, that she is disqualified pursuant to section 86(c)(2); and

(4) adopt the ALJ's conclusion that the applicant failed to establish her good character, honesty and integrity, but note that such finding is based upon the seriousness with which a theft from a patron must be viewed, together with the importance which must be placed upon the applicant's willful conduct designed to frustrate the investigation into the theft by casino security personnel.

By a vote of 4 (Chairman Read and Commissioners Waters, Armstrong and Burdge, in favor) to 1 (Commissioner Dodd, opposed), the Commission denied the renewal applications of Doris E. Dunston for a casino employee license[2] as well as her requests for both stay and permission to obtain a casino hotel employee registration in order to keep her job as a public area attendant at Claridge Hotel and Casino.

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2. Ms. Dunston's application for 1989-1992 renewal had been granted by the Commission at its meeting of July 26, 1989. This action was based on a recommendation of the DGE which, through administrative error, had failed to note the pending proceedings arising out of the 1986 renewal. Upon realization of the error, the DGE moved before the Commission to reopen the 1989 renewal and vacate its prior order. At the outset of the public (Footnote Continued)

The applicant filed a Notice of Appeal and obtained a stay of the Commission's order pending appeal. We issue this opinion to amplify the reasons for our decision.

FACTS

On April 13, 1985, the applicant, a public area attendant for Bally's, was cleaning in the slot section of the casino. She took possession of a cup containing 63 one-dollar tokens, which she claims was unattended. The applicant testified that she "found" the tokens in the $1 slot area. According to the applicant, no one was playing the slots near the unattended tokens.

Shortly after the applicant's "discovery," a complaint was made to Lt. P.K. Smith of Bally's security by a casino patron who claimed that a public area attendant had taken a cup of one-dollar tokens from her while she was playing the $.50 slot machines. Lt. Smith located and interviewed the applicant who was one of two attendants assigned to clean the slot areas. Notwithstanding that she now acknowledges having possession of the tokens, the applicant denied that she had removed any tokens from the casino floor.

(Footnote Continued)
meeting of August 30, 1989, the Commission reopened its prior decision for a determination consistent with the outcome of the 1986 renewal.

Subsequent to this interview, the applicant transferred the tokens to the locker of her friend, Remel Terry. The applicant was interviewed again by Lt. Smith. At this time her locker was searched. No tokens were found. The applicant then gave her first of two written statements to security in which she stated that "[a]t no time did I remove any cup of money from this section" (R-1).

According to the investigation report, subsequent to both the search of the applicant's locker and the issuance of her first written statement, security was informed by what is described as a "reliable confidential source" that she had taken the "money" and had given it to a friend to keep in her locker. Lt. Smith interviewed Ms. Terry who denied having any knowledge of the money, but offered to have her locker inspected. Upon inspection the tokens were discovered in a bag, wrapped in plastic gloves. Ms. Terry denied that the tokens were hers or that she had ever seen them before the inspection.

The applicant was then interviewed by Lt. Smith for the third time. She provided a second written statement in which she absolved Ms. Terry of all wrongdoing and further admitted that she had placed the tokens in her own locker after she had found them in the slot area. The statement also indicated that after being interviewed by security the

first time she gave the tokens to Ms. Terry for safe-keeping.

The tokens were returned to the casino patron who did not press charges. Because of the incident the applicant was terminated from her job.

DISCUSSION

Violation of N.J.S.A. 2C:28-3(b)(1)

The ALJ concluded that by giving false information to Bally's security officers, the applicant committed the offense of unsworn falsification to authorities in violation of N.J.S.A. 2C:28-3(b)(1) which provides:

> A person commits a disorderly persons offense if, with purpose to mislead a public servant in performing his function, he: (1) makes any written false statement which he does not believe to be true....

Public servant is defined in N.J.S.A. 2C:27-1(g) as "any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses..." Bally's security personnel are private employees of the casino/hotel. They are not "public servants" as defined by the statute. Accordingly, we reject the ALJ's finding that the applicant committed the offense

of unsworn falsification to authorities contrary to N.J.S.A. 2C:28-3(b)(1).

Disqualification pursuant to N.J.S.A. 5:12-86(c)(2) and (g)

The ALJ found that the DGE presented insufficient evidence to conclude that the applicant committed theft pursuant to N.J.S.A. 2C:20-3. We disagree.

N.J.S.A. 2C:20-3(a) provides "[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." As relevant to this case, the elements to be established are two-fold: (1) an unlawful taking; and (2) an intent to deprive the rightful owner. Our analysis of the facts leads us to conclude that the elements of the offense have been established by a preponderance of the evidence.[3]

As to the unlawful taking, the applicant testified that when she found the money in the cup she knew it was not hers. It is not required that she knew the identity of the rightful owners. State v. Leicht, 124 N.J. Super. 126, 132

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3. It is well-settled that in the context of a licensing proceeding, it is the civil preponderance standard that applies, not the criminal law standard of proof beyond a reasonable doubt. In the Matter of the Applications of Boardwalk Regency Corp. and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 298 (1980), mod. 180 N.J. Super. 324 (App. Div. 1981); mod. 90 N.J. 361 (1982).

(App. Div. 1973). Her efforts to deem the money abandoned are unpersuasive and unavailing. These were not stray coins found while sweeping under a slot machine at the close of the business day. The applicant found a Bally's cup, partially filled with tokens, in the slot section during operating hours that quite plainly had to have been the property of a casino patron. Even if we were to accept her testimony that she came upon them in an area where no patrons were about (which, because of her many contradictory and dissembling statements, we are not inclined to do), such momentary unattendance does not constitute an abandonment within the meaning of the law. State v. Bailey, 97 N.J. Super. 396 (App. Div. 1967). That this particular cup was not abandoned in that sense was readily established when the victim reported the tokens stolen shortly after Ms. Dunston took possession of the cup.

The applicant testified that when she found the money she took it out of the cup and put it in her pocket where it mingled with other money she had found that day. She then removed the tokens from her pocket, wrapped them in plastic work gloves and put the gloves in a duffel bag which she kept near her work station. When she finished cleaning her slot area, she went to the ladies room to remove her sweater. She denied secreting the tokens in her locker. Upon return from the ladies' room, her supervisors informed

her that she had been accused of theft. As noted, the applicant signed a statement in which she denied taking any money. She then took the wrapped gloves and asked her friend to hold the money in her locker. The money was recovered from her friend's locker after security received a tip as to its whereabouts. The applicant gave a second statement intended to absolve her friend of "any wrong doing" which states "I found the money in the slots - there was no one around. I then took the coins to my locker after being questioned by security, I gave them to Mel for safe keeping. This statement void [sic] all other previous one [sic]." (R2).

Also admitted into evidence was the report of the theft prepared by Lt. P.K. Smith, of the Bally security department. This report, admissible hearsay pursuant to section 107(a)(6), contains the applicant's admission of theft as well as her efforts to conceal the money. "At this point Dunston admitted her involvement. She stated that she had found the tokens unattended and had taken them first to the ladies' room and then to her locker...." (R3). We are satisfied from the testimony and the documentary evidence introduced at the OAL that the applicant committed an unlawful taking.

We now consider whether the applicant's conduct establishes her intent to deprive the rightful owner of her

property. Despite her written statement and her admission to Bally's security that she had secreted the money in her locker, at the administrative hearing she denied this activity. The self-serving nature of the applicant's testimony aside, we choose to rely upon the documentary evidence in the record and the reasonable inferences derived therefrom. Her locker was used to hide the stolen money until she feared its discovery after confrontation by Bally's security. Her friend's locker became the next hiding place. The applicant finally told the truth when she realized that her misconduct placed her friend in jeopardy. The applicant's actions belie her words; we find that she intended to deprive the rightful owner of her tokens.

Unlike the ALJ, we do not interpret N.J.S.A. 2C:20-3 as requiring an identification by the victim of the applicant as the thief. The ALJ cited no authority for this proposition, nor does our research reveal any that would preclude a conviction for theft simply because the victim was unable to identify the perpetrator. We find that the preponderance of evidence in the record establishes that the applicant committed theft by unlawful taking contrary to N.J.S.A. 2C:20-3, a disorderly persons offense. Therefore, we reject the ALJ's conclusion to the contrary.

We must now determine whether this theft of $63 is an inimical offense under section 86(c)(2). Sections 86(c)(2)

and (g) provide for the disqualification of an individual who, although not criminally prosecuted, has nevertheless committed conduct equivalent to an offense which is inimical to the policies of the Act and to casino operations.[4] There is no requirement that an inimical offense be criminal, as distinguished from disorderly.

To determine whether an offense is disqualifying pursuant to section 86(c)(2), we have followed the precepts of the first casino license decision:

> ...Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present

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4. N.J.S.A. 5:12-86(c)(2) provides, in relevant part, for the disqualification of an individual who has committed "[a]ny other offense [not specifically listed in section 86(c)(1)] under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations...."

N.J.S.A. 5:12-86(g) provides for the disqualification of any individual based upon:

> [T]he 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....

> 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, 10 N.J.A.R. 244, 254 (1979).

More recently, we have recognized that the rehabilitative criteria contained in section 90(h) are an integral part of this analysis.[5] See Davis v. Division of Gaming

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

> Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c.110 (C.5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:
>
> (1) The nature and duties of the position applied for;

(Footnote Continued)

Enforcement, 8 N.J.A.R. 301 at 314 (1985), where we ruled that "[t]he notion of rehabilitation is subsumed in the inimical analysis."

1. Nature and Duties. Although the position of public area attendant is not an inherently sensitive position in the context of casino gaming, it does involve contact with casino patrons on the casino floor, and, in instances such as occurred here, with their money.

2. Seriousness. A theft on the casino floor by a casino employee is extremely serious. The harm to public

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(Footnote Continued)

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

confidence is manifest. Casino patrons should not have to "guard" their cash, chips and tokens from predatory casino personnel.

3. Circumstances. The misleading if not false statements given Bally's security personnel who were investigating the theft is a circumstance which exacerbates the seriousness of the offense, as do the applicant's duplicitous efforts to conceal her crime by having her friend hide the money.

4. Date. The offense occurred on April 13, 1985.

5. Age. The applicant was then 41 years of age, thus her actions were not attributable to immaturity.

6. Repetitiveness. The conduct appears to be an isolated incident. The Division did not provide evidence of any other illegal conduct committed by the applicant.

7. Social Conditions. As the ALJ indicated, the applicant did not indicate any social conditions which contributed to the offense.

8. Rehabilitation. The applicant produced evidence of a fine work record in the casino industry subsequent to the incident. She is considered by supervisors and co-workers to be an honest and very dependable employee.

These factors need not be weighed equally to determine whether rehabilitation has been shown. Despite the age of the offense and the applicant's subsequent satisfactory

employment in the industry since the theft, consideration of the seriousness of the offense, the circumstances surrounding it and her misleading and self-serving testimony at the OAL, we conclude that public confidence in the integrity of the regulatory process and of gaming operations would be justifiably undermined. We therefore modify the initial decision to find the applicant disqualified pursuant to section 86(c)(2) and (g) of the Act.

Good character, honesty and integrity

The ALJ determined that the applicant failed to establish the good character, honesty and integrity required for licensure as a casino employee pursuant to sections 89(b)(2) and 90(b). We agree with this determination relying upon essentially the same evidence that shows insufficient rehabilitation under the inimical analysis. In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, 79-EA-113 (1980).

However, we view the applicant's efforts to frustrate the security department's investigation as especially revealing of her lack of good character, honesty and integrity. Casino security departments, like surveillance departments and games supervisory personnel, are all part of the people-watching-people system essential to the casino regulatory structure. Our goal is to preserve public confidence in the integrity of licensed gaming. To this

end, cooperation, rather than interference, is required from all licensees. That the applicant manifested a willingness to thwart the investigative function in furtherance of her illegal activity reveals that she is not amenable to the regulatory process.

Our assessment of the applicant's character is unaffected by our determination that her conduct on April 13, 1985, satisfies the elements of theft by unlawful taking contrary to N.J.S.A. 2C:20-3. Even if her conduct was not criminal, it was sufficiently egregious under the exacting standards of the Casino Control Act to warrant the conclusion that she lacks the good character, honesty and integrity required for licensure. Accordingly, we find that she has failed to establish her good character, honesty and integrity as required by sections 89(b)(2) and 90(b) of the Act.

CONCLUSION

Upon consideration of the evidence adduced at the hearing and with due recognition of the arguments advanced by both parties, we conclude for the reasons expressed herein that the applications of Doris E. Dunston to renew her casino employee license be denied. Moreover, we note that she is presently employed in the very position in which she demonstrated her unsuitability for licensure. Therefore, we find no good cause to permit her to obtain a casino hotel employee registration under which she could continue her unemployment.

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

W. David Waters, Commissioner

E. Kenneth Burdge, Commissioner

Frank J. Dodd opposed the motion.

Frank J. Dodd, Commissioner

Dated: 9/27/89

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITIONS :
OF ELSINORE SHORE ASSOCIATES FOR :
RENEWAL OF ITS PLENARY CASINO :
LICENSE AND ITS CASINO HOTEL :
ALCOHOLIC BEVERAGE LICENSE :
(PRN 350801; 350802) :

OPINION

RECEIVED
JAN 16 1990
CASINO CONTROL COMMISSION
LEGAL DIVISION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chair
Valerie H. Armstrong, Vice-Chair
E. Kenneth Burdge, Commissioner
W. David Waters, Commissioner
Frank J. Dodd, Commissioner

Appearances:

For Elsinore Shore Associates:

Harry J. Levin, Esq.
David M. Satz, Jr., Esq.
David J. Satz, Esq.

For the Division of Gaming Enforcement:

Eugene M. Schwartz, Assistant Director
David Arrajj, Deputy Attorney General

Before the Commission is the application of Elsinore Shore Associates (ESA) to renew its casino license and casino hotel alcoholic beverage license. This matter is the fourth license renewal proceeding held since ESA filed for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 et seq., in November 1985. In each of the past three annual renewal hearings the Commission found that ESA had satisfied all license criteria by clear and convincing evidence. In each of those hearings the Commission demonstrated its awareness of the Casino Control Act's (Act) N.J.S.A. 5:12-1 et seq., concerns for continuity and

stability of casino operations as well as its sensitivity to the bankruptcy concepts of breathing space and fresh start.

Thus, the Commission found that the Act's demand for financial stability was not automatically violated by a Chapter 11 bankruptcy filing. Further, it was recognized that there were several bankruptcy protections, most notably the automatic stay, which better enabled ESA to demonstrate its financial stability through the respite from its staggering debt service obligations. In addition, although financial projections were virtually never met, the Commission repeatedly accepted management's assurances that negative variations were the result of non-recurring external problems and that the future would be much brighter once a plan of reorganization was developed.

The Commission also independently reviewed the plan in reaching a determination of financial stability at last year's license renewal hearing for the 1988-89 license term. In doing so, several conditions were affixed to ESA's casino license to assure that certain statutory objectives would be met and to provide a measure of working capital necessary to maintain a proper casino operation.

It is obvious from the foregoing that ESA's business goals throughout its reorganization have not been frustrated by a closed-minded reading of the Act. It is equally obvious that the Commission has demanded reasonable safeguards against the evident dangers posed to the licensing scheme by a foundering casino. However, in the present renewal proceedings the Commission must once again consider ESA's suitability for licensure, and must

once again consider, among other factors, the financial crite of N.J.S.A. 5:12-84.

Section 84(a) requires an applicant for the issuance of renewal of a casino license to establish its "financial stability, integrity and responsibility." N.J.S.A. 5:12-84(a).

In In Re Resorts Casino License Application (Docket No. 79-CL-1, at 7) this Commission explained:

> By its terms, this standard encompasses all financial aspects of the applicant, and holding company and the other qualifiers. In addition, to basic solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual.

In addition to the three financial criteria in Section 84(a section 84(d) requires the applicant to demonstrate "sufficient business ability and casino experience as to establish the likelihood of the creation and maintenance of a successful, efficient casino operation." All of the licensing criteria are clearly intended to foster a number of basic policies of the Act. Of course, the most basic policy of the Act is to assure both the fact and the public perception that casino enterprises and gaming operations themselves are conducted with the utmost integrity. This policy cannot be successfully carried out unless this Commission can be assured that casino licensees have adequate financial resources, and manage those resources ably, responsibly and honestly.

A casino enterprise which lacked such financial attribut and resources would be prey to the kinds of untoward influences and corrupt practices which have historically plagued casino

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gaming. Such an enterprise would likewise not be in a positic to assure public confidence that patrons would be paid gamin winnings. Moreover, it might well not be capable of meeting th extensive requirements of the regulatory system, and would b sorely tempted to scrimp on governmentally mandated expenses Finally, such an enterprise would not be in a position t contribute to the revitalization of the tourist industry i Atlantic City and the State as a whole, which was, after all, the reason that New Jersey embarked upon the bold social experiment of legalized casinos.

While the licensing criteria are the same as at prior renewal matters, the instant application arises under a revised section 88(a) of the Act, which requires that any renewal we grant shall be for a period of two years.[1] The variety of approaches which ESA has suggested as a means of meeting the statutory burden of financial stability for a two-year license

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1. Section 88(a) of the Act, as amended, provides in pertinent part:

> ... The license period for a renewed casino license shall be one year for the first two renewal periods succeeding the initial issuance of a casino license pursuant to section 87 of P.L.1977, c. 110 (C. 5:12-87). Thereafter, a casino license shall be renewed for a period of two years.... Notwithstanding the foregoing, the commission may, for the purpose of facilitating its administration of this act, renew the casino license of the holders of licenses initially opening after January 1, 1981 for a period of one year; provided, however, the renewal period for those particular casino licenses may not be adjusted more than once pursuant to this provision....

term and the illusory nature of all of those approaches, itself instructive on the issues of financial stability, integrity and responsibility, as well as business ability. During the prehearing process, which began on January 30, 1989, ESA at various times told of plans to surrender its casino licensee, to sell the facility, and to obtain $5 million in working capital financing. None of these plans came to fruition.

At the outset of this hearing ESA stated on the record that it could not satisfy the financial stability criterion of section 84 for a two-year period (T. 58), and indeed it is undisputed that ESA could not satisfy that criterion for a one-year period. ESA requested a ruling that section 88 allows the Commission to grant a license for whatever period of time a casino licensee can demonstrate financial stability. (T. 51-60). This Commission ruled on March 28, 1989, that section 88 is clear in its mandate that licenses "shall be for a period of two years." (T. 103-112). See Casino Control Commission Resolution No. 89-91.

ESA then revealed a plan to establish its financial stability for approximately six months, within which time a sale of the property would take place. The Division of Gaming Enforcement (Division) objected to the presentation of evidence in support of this proposal on the ground that it did not address the issue of two-year licensure. (T. 156-186). However, testimony was allowed to give ESA all possible latitude in presenting whatever information it wanted and because evidence of financial stability for less than two years could at some point

in the proceedings become relevant to the conservatorship provisions of the Act.

However, it is clear from the evidence presented that ESA's novel theory is an unavailing attempt to circumvent the prior ruling on the two-year license issue. This Commission has never held that a showing of financial stability can be made by proof that the licensed entity will cease to exist somewhere during the license term because it may have sold its interest. Yet, in asking for a ruling that its licensability for a full term can be based on the existence and qualifications of an unknown purchaser, ESA is essentially seeking a determination that its license somehow survives the sale. Since the Act specifically prohibits the transfer of any license or an interest in any license, N.J.S.A. 5:12-1(b)(8), 104(c), it is apparent that ESA's theory runs counter to the clear command of the statute.

Further, the recent enactment of the legislation on interim casino authorization (ICA), N.J.S.A. 5:12-95.12 et seq., does not bridge the gap between ESA's inability to show financial stability for the full license term and the ultimate financial wherewithal of the ICA candidate. Clearly, an ICA is intended to allow transfers of significant casino-related property interests without the immediate qualification of the purchaser. See N.J.S.A. 5:12-1(b)16. However, there was never any doubt that the transferor would have already established its entitlement to a full-term license in the ordinary course.

In short, even if ESA had proven by clear and convincing evidence that it will be financially stable for six months and

that it will sell its facility within six months, the Commiss could not grant a casino license. However, this question need not be reached inasmuch as the record does not support ESA's claim that it will be stable for six months or that it will effect a sale within that time.

ESA first presented testimony that it would achieve financial stability for six months by failing to comply with certain requirements of the plan of reorganization approved in the bankruptcy proceeding. Specifically, ESA intended to negotiate arrangements to forgo required payments to its bondholders and its attorneys. (T. 200-202, 218-219, 259-255). No such arrangements were reached. ESA subsequently withdrew that proposal and contended that its short-term stability will be achieved by the infusion of approximately $2 million in settlement proceeds from a lawsuit regarding structural deficiencies in the casino hotel building and a $2 million credit line from the licensee's parent company, Elsinore Corporation (Elsinore). (T. 385-388, 606, 646).

As to the settlement, ESA imparted that it is in the approximate amount of $2 million, and in fact it is included in ESA's projections as a $2 million cash receipt in April 1989. (T. 505, 722-723). However, there is no definitive settlement agreement, and up to $500,000 of the settlement upon its finalization will be held in escrow for repairs to the building. (T. 706-708). Since that amount will not be available for ESA's unrestricted use, and unless cash is forthcoming from Elsinore, ESA's May 1989 bond interest payment and payment of professiona

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fees, when combined with the other projected cash disbursements for May, would cause its adjusted cash balance to fall below the minimum $6 million required by the Commission for the safe operation of the casino facility.

As to the Elsinore credit line, there are simply too many contingencies to the creation of the line or the release of any funds to take any financial comfort. There is as yet no agreement with the banks to provide the credit line. Even if the line is created, the Elsinore Board will regain the right to veto any ESA request for funding in the event ESA needs the money for current operational expenses rather than to fund debt service. (T. 657-662, 667-669, 691, 702-703).

No less significant is the fact that Elsinore may be unwilling or unable to fund the projected line of credit. In that regard, the record indicates that at least one board member believes that Elsinore should not provide any more funds to ESA. See Interview of Charles Gerber, Esq., D-4 in evidence, March 27, 1989. Further, the trust indenture with the Elsinore bondholders, a loan agreement between Elsinore's Four Queens facility in Nevada and its banks, and the stipulation with Nevada gaming authorities all contain substantial restrictions on Elsinore's ability to provide additional capital to ESA even if Elsinore were inclined to do so. See D-2, D-3, D-11 and D-12, in evidence, March 27, 1989. No assurance has been given that the banks, the bondholders or the Nevada authorities will grant the necessary approvals for the credit line to become a reality. (T.

657-664, 702-703). Once again, ESA has presented hope but no reality.

Even if support from this record for ESA's two suppositions could be extracted, its cash-flow analysis as accurately predicting ESA's future cannot be accepted. We have been told that ESA has budgeted conservatively for a 12% shortfall in anticipated net revenues based on an approximately 8% actual shortfall for the first quarter of this year. (Exhibit A-1, in evidence, March 31, 1989; T. 193-194, 212-213). However, the record demonstrates that ESA's actual experience for all of last year in the category of total net revenue was 14.6% below projections. For 1987, total revenues fell almost 28% below projections. (Exhibit C-5, in evidence, March 27, 1989; T. 293). The Commission thus cannot have any confidence that ESA will generate the levels of cash that it believes would be required, particularly since its current projections contain little, if any, margin for error. For instance, ESA's projected June cash balance is only $2,000 above the $6 million minimum required pursuant to Commission conditions. (Exhibit A-5, in evidence, April 13, 1989; T. 506, 687-690).

With respect to those conditions, it has again been suggested that the amount of the minimum casino cash balance has been set too high. (T. 497-500). The basic purpose of the conditions requiring a minimum $3 million balance it to ensure that ESA, on any gaming day, has available sufficient cash to operate and to pay patron winnings. The $3 million figure was imposed at the last three license renewal hearings, and at t

1987 hearing this Commission specifically rejected ESA's petitio to reduce the amount. At the present hearing ESA has failed t present any backup materials or analyses to support the request for a reduction.

ESA's willingness to present cash flow figures based on anticipated cash disbursements rather than those required in the normal course of business and pursuant to the reorganization plan is also distressing. As reflected in the stipulated Division Stability Report (S-3, in evidence, March 29,1989), ESA's overdue payables are inordinately high. Although the company contends that overdue payables are not unusual, historical data do not support that claim. While ESA contends that certain of its more prosperous competitors, like the Trump Organization, carry a high amount of payables (T. 334), this is not particularly relevant to ESA's situation, where payables have been allowed to balloon recently in order to conserve what little cash is available.

An examination of ESA's revenues likewise reveals a disheartening picture. After accounting for the artificial effect of the "Hot Spots" marketing program in which slot tokens were counted as revenue, ESA's revenues declined in 1988. Revenues had declined precipitously over the three prior years. ESA's 1988 revenue declined by 1.3% over 1987, and fell more than $34 million short of that achieved in 1986. See Exhibits C-5, C-5a and C-5b, in evidence, March 27, 1989. For a second consecutive year, ESA's revenue was insufficient to fund its operations, much less cover its restructured debt service.

ESA's 1988 operating loss of $4.4 million was more than $ million greater than the operating loss it suffered in 1987. Moreover, had it not been for an unusual credit of $2.99 million against expenses resulting from a real estate tax appeal settlement with the City of Atlantic City, ESA's operating loss for 1988 would have been almost twice as large as it was and would have nearly tripled its operating loss for 1987. See Exhibits C-5 and S-2, in evidence, March 27, 1989.

The expense picture is no more encouraging. After reducing its expenses in 1986 and 1987, ESA was predictably unable to make further cuts. In 1988 expenses actually increased over 1987.

The net loss figures are even more troublesome. ESA's 1988 net loss of $75 million, while including a write-down of the book value of the Atlantis of nearly $52 million, was the highest has ever experienced. However, 1988 continued a trend begun in 1984 of operating at a net loss.

At last year's hearing the Commission was assured that ESA's extensive losses were due to the labor strike and the opening of the Showboat, and that its results would improve markedly once the strike was settled and the impact of the Showboat opening had subsided. See Exhibit S-2. Clearly, the assurances received at the 1988 hearing were, as those received at prior hearings, unfounded. That history cannot be ignored when assessing the latest projections.

At last year's hearing ESA's Hot Spots promotion was heralded as the centerpiece of its marketing program. It is now clear that the Hot Spots program has failed to yield significan

benefits. Comparing ESA's slot win, adjusted to discount slot tokens, in the last five months of 1988, with its slot win in the same months in 1987 adjusted to discount complementary coins, demonstrates an improvement of only $2.4 million. By ESA's own admission, its 1987 results in these months were severely depressed by reason of the Local 54 strike. ESA's adjusted slot win results in 1986 outstripped its 1988 results by more than $5.5 million. Id. In short, the Hot Spots program is but the latest in a series of failed marketing strategies at the Atlantis.

The deterioration in ESA's cash position has accelerated since the effective date of ESA's reorganization plan on September 30, 1988, and has continued up to and through this hearing. On April 13, 1988, ESA's cash position was $9.1 million. By January 11, 1989, its cash position had fallen below $7 million for the first time since November 1985. The severity of this decline is highlighted by the fact that for the last half of 1986 and nearly all of 1987, ESA's cash position was above $15 million. It is also most significant that this decline occurred notwithstanding the infusion by Elsinore of $7 million in working capital, the last $117,000 of which was drawn down during this hearing. (Exhibit D-43, in evidence, April 4, 1989; Exhibit C-7a, in evidence, April 6, 1989; T. 685-686). From January 17, 1989, ESA's cash position fell below $7 million on more than 20 occasions, and below $6.5 million on four of those occasions. See Exhibit S-2.

ESA Vice President of Finance R. Bruce McKee testified at length about the licensee's constant attempts to defer the payment of cash expenses arising both in the ordinary course of business and from consummation of the reorganization plan. Mr. McKee said that he would prefer not to call ESA a "seat of the pants" operation (T. 275), but it is clear from figures regarding cash position and overdue payables that it is precisely that.

Beginning on the effective date of the plan, reorganization expenses, which ESA represented to this Commission and to the bankruptcy court would be paid on that date, were in fact deferred. At last year's renewal hearing, it was estimated that ESA would pay out approximately $3.36 million in reorganization plan expenses on the effective date including approximately $1.9 million in professional fees and $1 million to unsecured creditors. Thereafter, Elsinore Corporation was to bring ESA's cash position up to $10 million with funds from the $7 million working capital loan fund required as a condition of ESA's 1988 license. On the effective date of the plan, in fact, ESA paid out only approximately $154,000 to satisfy certain administrative and priority non-tax claims.

Professional fees allowed as administrative expenses had not yet been determined by the bankruptcy court as of the effective date, and were not determined until early December 1988. At that time, a number of orders were entered in the bankruptcy court allowing approximately $3.2 million in legal fee claims against ESA. ESA negotiated extended pay-out terms for those legal fees with payments scheduled to occur in February through June 1989.

At present, approximately $1.2 million still remains to be paid. See Exhibit S-2.

Additionally, the $1 million payment due from ESA to be shared ratably by the unsecured creditors was not made on the effective date as required. Because ESA objected to approximately $2.7 million in unsecured claims, ESA took advantage of the 90-day hiatus permitted by Section 11.2 of the Reorganization Plan and did not pay the unsecured creditors at consummation. Although the 90-day period expired at the end of December 1988, ESA still waited until March 6, 1989, to make a $333,000 interim partial distribution to its unsecured creditors. (Exhibit C-5; T. 520-521).

ESA posits that it calculated the amount of the partial distribution in order to reserve against the amount of claims that are being contested. However, there are approximately $8 million in uncontested allowed claims. Even if all the contested claims become a part of the unsecured class, ESA could have reserved against that prospect and still made an interim partial distribution of approximately 75% of the amount of the payment earmarked for the unsecured class, rather than the 30% that was paid.

ESA contends that since consummation is proceeding in accordance with the plan of reorganization. Whether that is true is not our primary concern. Rather, the Commission must be guided, in these license renewal proceedings, by the vital law enforcement interests that animate the Act. It does not follow that the Commission is powerless to act simply because ESA's 1989

operating income in the budget submitted is only $30,000 l[illegible] than the same amount submitted in its bankruptcy projections. As described previously, forecasting problems are endemic with ESA.

In that regard, ESA's own figures demonstrate that, for the first five months since consummation, its actual operating income is $1.5 million below forecasts, with net income almost $3 million below projections. Further, ESA's actual operating loss of $4 million for the five month period was not any larger than that because ESA was able to record an unbudgeted tax credit from Atlantic City. See Exhibit C-5. Without that credit, and based on ESA's budgeted expense for real estate taxes for the period, ESA's operating loss would have increased by $3 million to $7 million. Even with the tax credit, ESA's operating loss for the five-month period still was larger than projected by $[illegible] million. (Exhibit A-3, in evidence, April 13, 1989; T. 439-441). Clearly, the fact that ESA gave the court and this Commission comparable budgets does not preclude an independent review of ESA's actual performance or assessment of the reasonableness of ESA's projections as required to ensure its fitness for licensure.

The foregoing is a brief review of ESA's bleak financial picture in the record. There are, however, several related matters which require discussion.

ESA's decision to utilize the restricted and dedicated accounts for its own purposes is one such matter. Mr. McKee testified that he authorized the transfer of funds from a bank account, restricted pursuant to license conditions requiring E[illegible]

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to maintain fixed casino cage balances, into the general accoun of the company for working capital purposes in the event suc funds were necessary to be used over the three-day President' Day weekend. ESA management interpreted the license condition a requiring it to maintain the balance only on the weekly date it reported the balance to the Commission staff. It contends the submission of regular weekly reports fully demonstrated its compliance with the license conditions. Thus, ESA could have unfettered use of funds maintained in restricted accounts for undedicated purposes in between reporting dates. (See T. 236-254, 261-264.)

The interpretation of the conditions proffered by Mr. McKee and Ms. Hood in their testimony is simply untenable. Clearly, ESA chose to disregard the conditions of its license in order to prepare for possible cash deficiencies over an impending holiday weekend. Although ESA's decision may have been an expedient business choice, the right decision, within the confines of this highly regulated industry, would have been to seek relaxation of the license conditions if it had no other financial resources available. At a minimum, ESA's judgment reflects negatively on its business ability and demonstrates a lack of sensitivity to regulatory process. It also demonstrates the valid statutory concern over the erosive effect of financial pressures on casino management resolve to abide by the rules.

ESA's blind adherence to its Hot Spots promotion likewise reflects poorly on its business ability. As stated in the Financial Division Staff Report (Exhibit C-5), Hot Spots has not

proven to be an effective method to improve ESA's ability to generate cash. Thus, while bus patron counts were up and a reduction in coin complimentary expenses occurred as a result of the program, patrons were not utilizing their own funds to gamble, thereby forcing Atlantis to pay out cash for winnings to patrons who wagered only Hot Spots tokens.

ESA continues to claim that Hot Spots is an effective revenue enhancement device. The facts clearly reveal that it is not. The program has not generated sufficient patron interest in the facility to warrant a patron to gamble his or her own money.

ESA's lack of business ability, financial responsibility and general business probity have also been demonstrated by its approach to this proceeding. The cash flow projections presented were developed with an eye towards the end result, rather that through an honest assessment of whether the figures were attainable. Based on the actual results over the last several years, it is now abundantly clear that the forthrightness of ESA's projections is suspect. The Commission cannot tolerate such an approach to the regulatory process.

ESA's questionable business ability is also revealed by its constant recasting of the evidence it sought to present during the hearing, despite the Commission having conducted four prehearing conferences. Decisions had to be made, but apparently the cacophony of views prevented any one theme from being heard until the originally scheduled hearings were about to end.

Based on the foregoing, and in view of the fact that ESA has suffered - and continues to suffer - the loss of key personnel,

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ESA is no longer able to demonstrate that it possesses sufficient business ability or financial responsibility to ensure the operation of a successful, efficient and well-regulated casino hotel.

The conclusion is inescapable that ESA has not demonstrated by clear and convincing evidence either its business ability or its financial stability, integrity or responsibility. Were relicensure to be granted, these standards would be rendered meaningless.

This Commission cannot renew ESA's casino license. This is not a conclusion reached lightly, since it would represent the only denial of a casino license renewal application in the history of this Commission. However, the record provides no basis for any other result.

Accordingly, the application to renew Elsinore Shore Associates' casino license shall be denied.

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

E. Kenneth Burdge, Commissioner

W. David Waters, Commissioner

Frank J. Dodd, Commissioner

CONCURRING OPINION OF VICE-CHAIR VALERIE H. ARMSTRONG

I fully support the Commission's decision. My comments regard the licensee's perspective on the conservatorship provisions of the Casino Control Act.

This is the first time the Commission will be required to address the meaning of the conservatorship provisions of the Casino Control Act in the context of possibly having to implement those provisions. Whether or not a conservator will be appointed is to be addressed at the proceeding which is yet to take place.

There is no doubt that the conservatorship provisions raise a host of questions. One thing, however, is very clear: this Commission is vested with tremendous discretion and flexibility in defining the role of a conservator under a given set factual circumstances.

Throughout this renewal proceeding, both in testimony and in documents introduced into the record, we have observed the licensee engage in wildly speculative negative generalizations regarding the impact of the appointment of a conservator, yet the licensee has not presented to us any specifics to support its conclusions. To date, its discussion of this issue is deeply disappointing. In publicly casting such unfounded negative light on the conservatorship issue, the licensee has done a tremendous disservice to itself, to its employees, and to the regulatory agencies.

These observations are made with the hope that, notwithstanding that the licensee has made its negati predisposition regarding the conservator issue abundantly clear,

at the very least, as we approach this issue for the first time, the public, as well as ESA's employees know that whatever the outcome, the Commission will evaluate the situation responsibly, objectively and sensitively.

Valerie H. Armstrong, Vice-Chair

SEPARATE OPINION BY
COMMISSIONER FRANK J. DODD

I support the decision to deny the two-year license very reluctantly. I dissented with respect to our holding that section 88 requires that any renewal of ESA's casino license must be for a period of two years. (See page 5 of Opinion).

The intent of the Legislature was clear. It amended the Casino Control Act to provide for two-year licenses for the industry and, more importantly, to facilitate the Commission's and Division's workloads. I believed then and I believe now that the Legislature intended us to have every option available and to use our discretion on a case by case basis.

Therefore, there is enough latitude in the Act to permit a license for a lesser period of time. However, the Commissio ruling on March 28, 1989, dening a six-month license, precludes my taking any other position with respect to a two-year license.

The situation is so rigid in this particular instance, it probably should be reviewed by the Legislature at some future time to provide for a type of interim license to prevent a similar case in the future.

Frank J. Dodd, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-36
REGISTRATION NO. 17314-40
OAL DOCKET NO. CCC 6175-88
ORDER NO. 89-32-11

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

Complainant,

v.

THOMAS A. EVANS,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 9, 1989,

IT IS on this 9th day of August 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6175-88
AGENCY DKT. NO. 89-36

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
THOMAS ALEXANDER EVANS,
Respondent.

Ralph L. Fusco, Jr., Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Thomas Alexander Evans, respondent, pro se

Record Closed: June 9, 1989 Decided: June 28, 1989

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent's continued casino hotel registration would be inimical to the policy of the Casino Control Act pursuant to section 86c(2) by virtue of his plea of guilty to lewdness in violation of N.J.S.A. 2C:14-4 on July 14, 1987.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on July 26, 1988. The respondent requested a hearing on August 4,

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1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 3, 1988, and the matter was scheduled for hearing on January 31, 1989. The hearing was adjourned because the scheduled hearing site did not have videotape player available. The matter was heard and the record closed on June 9, 1989.

ISSUE

A. Whether respondent's continued casino hotel employee registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:14-4, lewdness.

FINDINGS OF FACT

The essential facts in this matter are undisputed.

On July 2, 1987, the respondent was arrested and charged in the Atlantic City Municipal Court with lewdness in violation of N.J.S.A. 2C:14-4 for exposing himself on the premises of the Atlantis Casino Hotel.

The respondent pled guilty to the offense on July 14, 1987 and received a 30 day suspended jail sentence, one year probation with counseling, ordered to pay $25.00 court costs and $30.00 to the Violent Crimes Compensation Board.

On March 23, 1988, Mr. Evans was released from treatment by Doctor Joseph Mosley, staff clinical psychologist, Atlantic Mental Health Center, Inc.

Mr. Evans testified that he is 27 years of age and with the exception of the July 2, 1987 incident has never been arrested by the police. The respondent explained that he committed the lewd "for attention". He further stated that, as a result of treatment, he feels there will not be any further occurrences of lewdness.

The above is essentially uncontroverted and is thus FOUND AS FACT.

Section 86c(2) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

More recently, the Commission in Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986), clarified the analytical approach appropriate to cases involving disqualification pursuant to section 86c(2). The Commission stated at 314:

> The salient point to be made here is that we consider rehabilitation factors before including that the offense in question is or is not inimical under section 86c(4) [now 2]. Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to 86c(4) [now 2].

First, the respondent is successfully employed in the industry at the Showboat Casino and Hotel. Mr. Evans started as a houseperson. In May, 1988, he was promoted to bellman (R-3). Furthermore, the respondent has received good job evaluations (R-4). Respondent pled guilty to lewdness on July 14, 1987.

Secondly, the incident occurred on the premises of the Atlantis Casino Hotel. It is my impression from listening to the testimony of the respondent that he is embarrassed by the incident and that it is unlikely that the conduct will be repeated.

In addition, the respondent was successfully treated at the Atlantic Mental Health Center (R-1).

After considering the totality of the circumstances and having considered all of the mitigating and aggravating factors, including rehabilitation, I am persuaded that the respondent's actions of July 2, 1987 are not inimical to the policies of the Casino Control Act. I am also persuaded, given the nature of respondent's testimony, that participation by respondent in the casino industry would not undermine public confidence in the integrity of the regulatory process and create or enhance the danger of unsuitable activities in the conduct of casino operations. I, therefore, **CONCLUDE** that respondent's continued casino hotel employee registration would not be inimical to the policies of the Act, pursuant to section 86c(2).

ORDER OF DISPOSITION

It is **ORDERED** that the complaint against the casino hotel employee registration (No. 17314-40) of Thomas A. Evans be **DISMISSED**.

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

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

6-25-87
DATE

STEPHEN W. THOMPSON, ALJ

Agency Receipt:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 3, 1987
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 New Jersey State Police Investigation Report, dated July 2, 1987
P-2 Atlantic City Municipal Court Judgment, dated July 14, 1987
P-3 Videotape, dated June 26, 1986

For the Respondent:

R-1 Letter from Joseph R. Mosley, Atlantic Mental Health Center, Inc., dated October 5, 1988
R-2 Application for Order Granting Termination of Probation, dated August 18, 1988
R-3 Unsigned letter from Sharon Ross, General Services Manager, Showboat Hotel Casino and Bowling Center, dated November 3, 1988
R-4 Showboat Employees Performance Appraisal, dated August 26, 1988
R-5 Unsigned letter from Labooion Evans, dated November 3, 1988

WITNESS LIST

For the Petitioner:

Thomas A. Evans

For the Respondent:

Thomas A. Evans

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-152;
90-29
REGISTRATION NO. 69514-40
OAL DOCKET NO. CCC 245-90
ORDER NO. 89-33-17

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

Complainant,

v.

DANIEL P. FARQUHARSON,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law in Docket No. 89-152; and an initial decision of the administrative law judge having been filed with the Casino Control Commission recommending dismissal of the complaint of the Division of Gaming Enforcement; and an application for suspension and a complaint for revocation of the respondent's casino hotel employee registration having been filed by the Division bearing Docket No. 90-29; and the Division having alleged that on February 8, 1989, the respondent was indicted in Ocean County for three counts of sexual assault (second degree), in violation of N.J.S.A. 2C:14-26 and three counts of endangering the welfare of a child in violation of N.J.S.A. 2C:24-4(a); and the Division having filed exceptions to the initial decision and having

ORDER NO. 89-33-17

moved to reopen the record in Docket No. 89-152 in light of this indictment; and the Commission having considered the entire record of the proceedings at its public meeting of August 16, 1989,

IT IS on this 27th day of September 1989, ORDERED that the motion of the Division to reopen the record in Docket No. 89-152 is granted; and

IT IS FURTHER ORDERED that the initial decision finding the respondent rehabilitated from 1984 convictions for distribution of a controlled dangerous substance (CDS); conspiracy to distribute CDS and possession of CDS with intent to distribute is rejected in light of his indictment on February 8, 1989, for sexual assault and endangering the welfare of a child; and

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is suspended for good cause shown, pursuant to N.J.S.A. 5:12-109(a)(1) and (3), pending the final disposition of the complaint or until further order of the Commission; and

IT IS FURTHER ORDERED that the complaints bearing Docket Nos. 89-152 and 90-20 be consolidated and transmitted to the Office of Administrative Law for a hearing; and

ORDER NO. 89-33-17

IT IS FURTHER ORDERED that the respondent deliver his casino hotel employee registration card to the offices of the Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey, within 24 hours of receipt of this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 245-89
AGENCY DKT. NO. 89-152

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
DANIEL P. FARQUHARSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Daniel P. Farquharson, the respondent, pro se

Record Closed: June 19, 1989 **Decided:** June 29, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Daniel P. Farquharson's casino hotel employee registration no. 69514-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1) and therefore is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

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PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so that he could be employed as a cook-intermediate at Caesars Hotel and Casino. By complaint to the Commission, filed December 6, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted in Massachusetts of three counts of distribution of a controlled dangerous substance (cocaine), which is analogous to a violation of N.J.S.A. 2C:35-5; conspiracy to distribute a controlled dangerous substance (cocaine), which is analogous to a violation of N.J.S.A. 2C:5-2; and possession of a controlled dangerous substance (cocaine) with the intent to distribute, which is analogous to a violation of N.J.S.A. 2C:35-5. All of these are disqualifying offenses under section 86c(1). Based upon the complaint, the Commission notified the respondent on December 15, 1988, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated December 20, 1988, and received by the Commission on December 21, 1988, the respondent requested a hearing. On January 5, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 12, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Stephen W. Thompson on March 14, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: distribution of a controlled dangerous substance, which is analogous to N.J.S.A. 2C:35-5.

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was held on June 19, 1989, in the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On October 26, 1983, the respondent sold 1/2 ounce of cocaine for $1200 to an undercover Massachusetts state trooper who was working with the state drug enforcement agency. The respondent had purchased the cocaine for $1200, and he sold it for no profit to the undercover trooper. In February 1984, the respondent was indicted in the Superior Court of the Commonwealth of Massachusetts, Indictment Number 046615 (P-1a), for the distribution of a controlled dangerous substance (cocaine). On December 5, 1984, the respondent pled guilty to the charge and was sentenced to serve nine to ten years in the Maximum Institution-Walpole. This sentence was suspended, and the respondent was placed on probation for five years (P-1b).

On November 1 and November 3, 1983, the respondent sold 1/4 grams of cocaine for $25 each to a security officer at his place of employment. The respondent had purchased 1/8 of an ounce of cocaine for $300, and he divided that amount into 1/4-gram units for distribution. In February 1984, the respondent was indicted in two indictments in the Superior Court of the Commonwealth of Massachusetts, Indictment Numbers 046616 and 046617 (P-2a and P-3a), for the distribution of a controlled dangerous substance (cocaine). On December 5, 1984, the respondent pled guilty to the charges and was sentenced to serve nine to ten years in the Maximum Custody Institution-Walpole. This sentence was suspended, and the respondent was placed on probation for five years, to be served concurrently with the sentence imposed in indictment number 046615 (P-2b and P-3b).

On November 3, 1983, the respondent conspired with Karen Zanoni to distribute cocaine. The respondent supplied the cocaine to Ms. Zanoni, who then distributed the drugs. In February 1984, the respondent was indicted in the Superior Court of the Commonwealth of Massachusetts, Indictment Number 046618 (P-4a), for conspiracy to distribute a controlled dangerous substance (cocaine). On December 5, 1984, the respondent pled guilty to the charge and was sentenced to serve nine to ten years in the Maximum Custody Institution-Walpole. This sentence was suspended, and the respondent was placed on probation for five years, to be served concurrently with the sentence imposed on indictment number 046615 (P-4b).

On November 10, 1983, the respondent's employer had him and eight other employees report to an office, where State police troopers were waiting. The respondent

was arrested and searched incident to apprehension, and the troopers found two and one-half grams of cocaine on his person. In February 1984, the respondent was indicted in the Superior Court of the Commonwealth of Massachusetts, Indictment Number 046646 (P-5a), for possession of a controlled dangerous substance (cocaine) with the intent to distribute. On December 5, 1984, the respondent pled guilty to the charge and was sentenced to serve nine to ten years in the Maximum Custody Institution-Walpole. This sentence was suspended, and the respondent was placed on probation for five years to be served concurrently with the sentence imposed on indictment number 046615 (P-5b).

The respondent's oldest child was three years old in 1983. The child suffers from a severe asthma problem. The respondent's doctor told the respondent to obtain an air conditioner to assist the child's breathing. The respondent could not afford to purchase an air conditioner, and the respondent's medical insurance would not cover the cost of one. In September 1983, the respondent began selling small quantities of cocaine in order to raise money to care for his son. He and Karen Zanoni entered into a partnership whereby the respondent would purchase cocaine, cut it down into smaller packages, and Ms. Zanoni would then distribute (sell) the cocaine. The respondent was in the "drug business" for only two months. He sold approximately 1/8 ounce of cocaine each week, for a total sale of approximately one ounce over the two-month period.

The respondent was born on March 17, 1955, and is presently 34 years old. He was raised in Quincy, Massachusetts. His parents were divorced when he was only four, and he and his four brothers were raised by his mother and his stepfather. After graduating from high school, he entered the Army. He served for three years as a radio operator and separated with an Honorable Discharge.

Upon returning to Massachusetts, the respondent became employed by Stone & Webster Co. He began in the mailroom as a messenger, and in seven years advanced to become an administrative aide. It was while he was employed at Stone & Webster that the respondent sold the cocaine.

While under charges in 1983 and 1984, the respondent attended the South Coastal Career Development School in order to learn cooking. He also worked nights in a pancake house in Boston. After graduation, the respondent became employed by Boston University, working in the salad department of a kitchen. At the same time, he worked in a gas station in order to save money so he could move his family to New Jersey.

By 1985, the respondent had moved to New Jersey. For six months, he worked in the kitchen of the Holiday Inn in Toms River. As he was paid by the hour and the salary was low, he quit and took a salaried position as first cook in the Tuckerton Nursing Home. During part of his time at the nursing home, he acted as a supervisor.

The respondent did not originally apply for casino industry employment because of his criminal record. In mid-1986, the respondent spoke with a Commission attorney regarding his application for a casino hotel employee registration. He was told that there would be no problem in getting a registration in order to apply for a job; however, there could be a hearing at a later date where the Division would seek to revoke the registration based upon his criminal record. On July 24, 1986, the respondent applied for a position as a cook at Caesars. The respondent was issued a casino hotel employee registration, and he was hired as a cook-intermediate on July 31, 1986, by Caesars, where he is still employed.

The respondent has worked as a cook in nearly all of the restaurants in Caesars. He occasionally comes into contact with casino patrons in his role as a cook, since he is sometimes required to prepare dishes at a patron's table. The respondent now works in the main kitchen, and he has recently been promoted to full cook. His attendance at Caesars has been excellent, he has never been late, and he has not received any disciplinary actions or warnings.

The respondent is married and has two children, ages nine and seven. Both children have severe asthma problems. The younger child is neurologically impaired and has poor motor skills. He is presently in a special education class. The respondent's wife works days at a WaWa convenience store so that the children are rarely left with a baby-sitter.

The respondent submitted one letter of recommendation, written by his supervisor at Caesars. Nobert J. Zastavny, sous chef tournant, wrote in an undated letter that the respondent is a "very versatile, open minded and diligent employee. I . . . feel he is the type of individual who could do well at anything he put his mind to" (R-2).

FINDINGS OF FACT

1. On December 5, 1984, the respondent was convicted in Massachusetts of three charges of distributing a controlled dangerous substance (cocaine) on three different occasions: October 26, November 1, and November 3, 1983. The quantities of cocaine involved were 1/2 ounce, 1/4 gram, and 1/4 gram.

2. On December 5, 1984, the respondent was convicted in Massachusetts of conspiracy to distribute a controlled dangerous substance (cocaine), an act which occurred on November 3, 1983.

3. On December 5, 1984, the respondent was convicted in Massachusetts of possession of a controlled dangerous substance (cocaine) with the intent to distribute. The respondent possessed two and one-half grams of cocaine on November 10, 1983.

4. On December 5, 1984, the respondent was sentenced in the Superior Court of the Commonwealth of Massachusetts to serve five concurrent sentences of nine to ten years in state prison. These sentences were suspended, and the respondent was placed on probation for five years.

5. The respondent began selling cocaine in September 1983 in order to raise money to purchase an air conditioner to assist his asthmatic three-year-old son's breathing.

6. The respondent was in the "drug business" for only two months. Drug dependency was never an issue in this case.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident or his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, from my observations of the respondent's demeanor, the plausibility of his testimony and the manner in which he

participated in the proceedings, and from my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, regret, and remorse, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License—disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:5-2 (conspiracy to commit an offense which is listed in this subsection);
>
> . . . .
>
> N.J.S. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

> a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.
>
> b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).
>
> ....
>
> d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:
>
> (1) The nature and duties of the registrant's position;
>
> (2) The nature and seriousness of the offense or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the registrant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense or conduct;

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends that the respondent was convicted in Massachusetts of an offense which is analogous to a violation of N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance (cocaine); N.J.S.A. 2C:5-2, conspiracy to distribute a controlled dangerous substance (cocaine); and N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (cocaine) with the intent to distribute. These offenses constitute violations of N.J.S.A. 5:12-86c(1), and, accordingly, the Division argues that he is disqualified from continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's sale of cocaine on three occasions constitutes a violation of N.J.S.A. 2C:35-5a(1), which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:35-5, manufacturing, distributing or dispensing, provides in pertinent part:

a. Except as authorized by P.L.1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> . . . .
>
> b. Any person who violates subsection a. with respect to:
>
> (1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves . . . in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree.
>
> (2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants is guilty of a crime of the second degree;
>
> (3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $50,000.00 may be imposed;
>
> . . . .
>
> c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

The Division established—and the respondent admitted during his testimony—that the respondent knowingly sold 1/2 ounce of cocaine on October 26, 1983, 1/4 gram of cocaine on November 1, 1983, and 1/4 gram of cocaine on November 3, 1983, and that as a result of these three sales of cocaine, he was convicted in the Superior Court of the Commonwealth of Massachusetts of three counts of distribution of a controlled dangerous substance (cocaine). Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1). I further CONCLUDE that, pursuant to N.J.S.A.

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2C:35-5b(2) and (3), the offenses constitute crimes of the second and third degree, and that if aggregated as permitted in N.J.S.A. 2C:35-5c, the offense constitutes a crime of the second degree.

The Division further contends that the supplying of cocaine to a partner, who then sold the cocaine, constitutes conspiracy to distribute a controlled dangerous substance, a violation of N.J.S.A. 2C:35-5a(1), which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:5-2, conspiracy, provides in pertinent part:

> a. **Definition of conspiracy.** A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
>
> . . . .
>
> d. **Overt act.** No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree or distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog as defined in chapter 35 of this title, unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

The Division established—and the respondent admitted during his testimony—that the respondent knowingly supplied 1/4 gram of cocaine to his partner, Ms. Zanoni, who then sold (distributed) the cocaine. As a result of these actions, the respondent was convicted in the Superior Court of the Commonwealth of Massachusetts of conspiracy to distribute a controlled dangerous substance (cocaine).

Finally, the Division contends that the possession of two and one-half grams of cocaine on November 10, 1983, constitutes possession of a controlled dangerous substance with the intent to distribute, which constitutes a violation of N.J.S.A. 2C:35-5a(1), which, under the circumstances, disqualifies the respondent from continued registration.

The applicable statute is set forth in pertinent part above in this section.

The Division established—and the respondent admitted during his testimony—that the respondent knowingly possessed two and one-half grams of cocaine on November 10, 1983, with the intent to distribute, and that as a result of this action, the respondent was convicted in the Superior Court of the Commonwealth of Massachusetts of possession of a controlled dangerous substance (cocaine) with the intent to distribute. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(3), the offense constitutes a crime of the third degree.

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

In regard to the first criterion, Daniel P. Farquharson is a casino hotel registrant employed as a cook. As such, he does not have direct responsibilities for actual gaming activities, but he does occasionally have some minimal contact with casino patrons.

Second, the respondent committed three violations of N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance (cocaine); one violation of N.J.S.A. 2C:5-2, conspiracy to distribute a controlled dangerous substance (cocaine); and one violation of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (cocaine) with the intent to distribute, over a two-year period prior to his employment in the casino industry. The distribution of cocaine cannot be tolerated in our society. Consequently, this is an extremely serious offense. In addition, since the offense is a listed disqualifier under section 86c(1), it is very serious in a case such as this.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was involved in the actual distribution of a controlled dangerous substance over a period of two months. He purchased quantities of cocaine, cut the drug into smaller quantities for distribution, and then either sold the cocaine himself or supplied it to his partner who then distributed the cocaine. Such conduct cannot be tolerated: it poses a threat to the integrity of the gaming industry in this State.

Fourth, the respondent's misconduct occurred six years ago, in September through November 1983, when it ceased.

Fifth, the respondent was 27 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. While he has not committed any other violations of the criminal laws since this arrest, he does have a prior juvenile record. When he was either 13 or 14 years old he was apprehended for theft from parking meters, an offense which is analogous to a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, a disorderly person offense, and also for "joy riding" which is analogous to a violation of N.J.S.A. 2C:20-10, unlawful taking of a means of conveyance, also a disorderly person offense.

Seventh, the respondent's oldest child was three years old in 1983, and suffers from a severe asthma problem. The respondent's doctor told the respondent to obtain an air conditioner to assist the child's breathing. The respondent could not afford to purchase an air conditioner, and the respondent's medical insurance would not cover the cost of an air conditioner. In September 1983, the respondent began selling small quantities of cocaine in order to raise money to care for his son.

Eighth, since his arrest, the respondent has attempted to turn his life around. He graduated from a career development school, where he learned to cook. He has been gainfully employed for the last six years. He has been employed in the casino industry for the last three years. He has had no disciplinary infractions, and his good performance has recently been recognized by his promotion from cook-intermediate to cook. He moved his family to New Jersey in order to get a fresh start and to put these incidents behind him. He has proven himself to be a caring and responsible father. He accepts responsibility for and regrets his prior misconduct, and he has expressed remorse. He has complied with all conditions of his probation, has no probation violations or infractions, and is scheduled to be released from probation this December.

The Commission has addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a cook. He has no responsibility for any casino gaming activity, but he does have some minimal contact with casino patrons. Considering

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

the nature of the position he holds, the respondent's admirable work record in the industry over the last three years, his demeanor and candor at the hearing, the fact that he distributed cocaine as a last resort in order to raise money to purchase an air conditioner to assist his asthmatic son's breathing, the isolated nature of his offense as an adult, his lack of involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.[2]

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

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

---

2 I recognize that it could be argued that since the respondent is still on probation an inference could be raised that the offense is of relatively recent vintage and that the respondent has had insufficient time to establish his rehabilitation. I reject that inference in this case. It has been nearly six years since the offense was committed, and the respondent has been on probation for four and one-half years without incident. He appeared to be extremely honest, contrite, and remorseful at the hearing. He has turned his life around, is a caring husband and father, has a good job, and appears to be rehabilitated. Further, there appears to be little likelihood of this respondent reverting to his prior criminal conduct. It was a one-time transgression that occured over a brief period of time, and there were mitigating social conditions which adversely affected the respondent's reasoning.

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

June 28, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6-1-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 3, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Certifications for Indictment Number 046615

P-1a Superior Court of Massachusetts, Suffolk County, Indictment Number 046615

P-1b Superior Court of Massachusetts, Suffolk County, docket and calendar sheet for Indictment Number 046615

P-2 Certifications for Indictment Number 046616

P-2a Superior Court of Massachusetts, Suffolk County, Indictment Number 046616

P-2b Superior Court of Massachusetts, Suffolk County, docket and calendar sheet for Indictment Number 046616

P-3 Certifications for Indictment Number 046617

P-3a Superior Court of Massachusetts, Suffolk County, Indictment Number 046617

P-3b Superior Court of Massachusetts, Suffolk County, docket and calendar sheet for Indictment Number 046617

P-4 Certifications for Indictment Number 046618

P-4a Superior Court of Massachusetts, Suffolk County, Indictment Number 046618

P-4b Superior Court of Massachusetts, Suffolk County, docket and calendar sheet for Indictment Number 046618

P-5 Certifications for Indictment Number 046646

P-5a Superior Court of Massachusetts, Suffolk County, Indictment Number 046646

P-5b Superior Court of Massachusetts, Suffolk County, docket and calendar sheet for Indictment Number 046646

For the Respondent:

R-1 Caesars Atlantic City Hotel and Casino Employment Personnel Action Form, dated July 31, 1986

R-2 Letter from Nobert J. Zastavny, sous chef tournant, Caesars Atlantic City Hotel and Casino

R-3 Caesars Atlantic City Hotel and Casino Employment Application of Daniel P. Farquharson, dated July 24, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-101
APPLICATION NO. 77112-21
REGISTRATION NO. 82102-40
OAL DOCKET NO. CCC 8087-88
ORDER NO. 89-31-14

APPLICATION OF EUBILIA JANE GAYTON
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 9th day of August 1989, ORDERED that the initial decision is modified to find that the applicant, Eubilia Jane Gayton, intentionally failed to disclose her criminal record; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

ORDER NO. 89-31-14

IT IS FURTHER ORDERED that this denial shall not affect Eubilia Jane Gayton's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /rm

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8087-88
AGENCY DKT. NO. 89-EA-101

APPLICATION OF
EUBILIA JANE GAYTON
FOR A CASINO
EMPLOYEE LICENSE,

Eubilia Jane Gayton, petitioner, pro se
Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 28, 1989 Decided: June 21, 1989

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

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a letter on September 2, 1988 with the Casino Control Commission (CCC) objecting to the grant of a casino employee license to the applicant. The basis of the objection was the applicant's alleged failure to disclose her entire arrest record on her sworn Personal History Disclosure Form (PHDF), the application for casino employee licensure. Such conduct, if proved, is a violation of N.J.S.A. 5:12-86b.

The Division also objected to the applicant's licensure because it alleges that she does not possess the good character, honesty and integrity required of a casino employee by N.J.S.A. 5:12-89b(2) and 90b.

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The applicant requested a hearing on October 21, 1988 and the matter was transmitted to the Office of Administrative Law (OAL) on November 4, 1988, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on December 29, 1988. A plenary hearing was scheduled for March 3, 1989, at which time the applicant failed to appear. The applicant satisfactorily explained her absence and a new plenary hearing was scheduled for, and convened on, April 28, 1989.

The time in which to file an initial decision was extended until July 7, 1989, by the Casino Control Commission at the request of the undersigned.

FACTS

The Division proved and the applicant admitted that she had been arrested on several occasions. These arrests appear on Exhibit 4 in evidence as follows:

Accident, (Driving under the) influence	11-20-79
Arson to defraud Ins(urance Co)	5-18-77
Molest(ing) and Inter(fering)	7-1-77
Molest(ing) and Interfere(sic)	11-5-78
Contempt of Court	1-25-76
Disorderly Person	1-12-82
Disorderly Conduct	3-2-84
Simple Assault	8-10-84
Crim(inal) mischief	6-16-87

The applicant's testimony revealed that in addition to these arrests, she was also convicted of "driving while under the influence" approximately two and a half years ago. The applicant claimed that she was not found guilty of any of the above listed offenses but that she had received pretrial intervention on the arson charges. Three arson offenses were charged in 1977; conspiracy to commit arson, soliciting another to commit arson and setting fire to recover insurance.

John Maggs is an agent of the Division. On June 10, 1988, he asked the applicant about her arrest record during a telephone interview. She twice denied having a record and only admitted to her record when he confronted her with dates and charges. She explained to him that she did not disclose her record because she was afraid she would not be licensed if she did.

At the hearing the applicant quibbled endlessly over the definition of arrest and refused to admit that she lied about her arrests because, she claimed, she had no intent to deceive anyone even though she did not tell the truth.

Finally, the applicant offered no evidence on the question of her character, honesty or integrity.

LAW

The statute expressly requires that applicants "establish by clear and convincing evidence (their) good character, honesty and integrity." N.J.S.A. 5:12-89b(2). The record is devoid of any fact as to this issue. The applicant merely showed that she had been employed for a time at Showboat.

In addition, the failure of an applicant to "provide information, documentation and assurances" 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" is a disqualification from casino employee licensure. N.J.S.A. 5:12-86b and 90e. A criminal and arrest record is a material fact. N.J.S.A. 5:12-89b(2). Clearly, the applicant failed to disclose a material fact.

FINDINGS AND CONCLUSIONS

I **FIND** that the applicant failed to reveal her arrest record on the sworn PHDF application for casino employee licensure as required by N.J.S.A. 5:12-86b and 89b(2). I **CONCLUDE** that the applicant is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86b.

I further **CONCLUDE** that the applicant failed to establish by clear and convincing evidence that she has the good character, honesty and integrity required for casino employee licensure by N.J.S.A. 5:12-89b(2) and 90b.

ORDER

I **ORDER** that the application for casino employee licensure be **DENIED**.

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

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

June 21, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6/26/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 26 1989
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:
Eubilia Gayton

For the Respondent:
Eubilia Gayton
John Maggs

EXHIBIT LIST

For the Petitioner:

P-1 Form from Showboat dated 5-9-88
P-2 Letter dated 7-5-78

For the Respondent:

R-1 Division of Gaming Enforcement Letter dated 9-2-88
R-2 Casino Employee Application Form
R-3 Hotel Employee Application Form
R-4 Rap Sheet from Mullica Township
R-5 Photograph of Ms. Gayton and fingerprints
R-6 Arson Indictment

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-177
OAL DOCKET NO. CCC 194-87
ORDER NO. 89-40-25

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
GNOC CORP., t/a THE GOLDEN NUGGET HOTEL AND CASINO, JOSEPH CAVILLA AND DONALD PORS,	:
Respondents.	:

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of facts and settlement entered into by the Division of Gaming Enforcement and Joseph Cavilla and Donald Pors having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of September 13 and October 11, 1989,

IT IS on this 29th day of November 1989, ORDERED that the initial decision-settlement is modified to require payment of the civil penalties agreed to by the parties upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control rather than "no later than 30 days from the date of the final determination of the Casino Control Commission" as specified by the administrative law judge; and

IT IS FURTHER ORDERED that respondents Joseph Cavilla and Donald Pors are hereby reprimanded; and

IT IS FURTHER ORDERED that Joseph Cavilla pay a civil penalty in the amount of $750 and that Donald Pors pay a civil penalty in the amount of $1,500.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-177
OAL DOCKET NO. CCC 194-87
ORDER NO. 89-40-25

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
GNOC CORP., t/a THE GOLDEN NUGGET HOTEL AND CASINO, JOSEPH CAVILLA AND DONALD PORS,	:
Respondents.	:

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by GNOC Corp. and the Division of Gaming Enforcement (Division); and a reply to exceptions having been filed by GNOC Corp. (GNOC); and the Commission having considered the entire record of these proceedings at its public meetings of September 13 and October 11, 1989,

IT IS on this 29th day of November 1989, ORDERED that the initial decision is modified to increase from $7,500 to $20,000 the penalty for GNOC's violation of N.J.S.A. 5:12-78, -79(a)(3) and -80(d) in connection with Joseph Cavilla's and Donald Pors's refusing to allow the Division to remove a slot machine logic board from its premises in order to verify a jackpot in accordance with the established procedures; and

IT IS FURTHER ORDERED that GNOC pay a $7,500 civil penalty for violating N.J.S.A. 5:12-78 and -80(d) by paying a $1,920,861.65 jackpot before the Division had completed its inspection of the slot machine; and

IT IS FURTHER ORDERED that the initial decision is modified to require that the foregoing civil penalties be due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that GNOC take corrective action in the form of training programs and the issuance of necessary instructions to its personnel concerning their responsibilities and obligations in connection with any and all Commission and Division verification and investigative procedures.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /pm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT AS TO CAVILLA AND PORS
OAL DKT. NO. CCC 194-87
AGENCY DKT. NO. 87-177

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Complainant,
v.
GNOC CORP., t/a THE GOLDEN NUGGET
HOTEL AND CASINO, JOSEPH CAVILLA
AND DONALD PORS,
Respondents.

Timothy C. Ficchi, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Trent S. Dickey, Esq., for respondent (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, attorneys)

Record Closed: May 31, 1989 Decided: July 14, 1989

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

This matter was brought before the Office of Administrative Law as a contested case following transmission from the Casino Control Commission pursuant to N.J.S.A. 52:14F-1 et seq. The Division of Gaming Enforcement had filed a complaint against respondents Cavilla and Pors, as well as their employer, GNOC Corp., The Golden Nugget Hotel and Casino, charging that the respondents had violated provisions of the Casino

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Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter called the "Act"), and the regulations adopted pursuant to the Act. Specifically, the allegations arose from an incident occurring on May 8, 1986, at which time patron John K. Raney won a progressive jackpot on slot machine No. 6532, location No. 1214-02 at The Golden Nugget in the amount of $1,092,861.56. The Division alleged that respondent Cavilla and Pors had improperly refused to cooperate with the efforts of Gaming Equipment Specialist Wilson of the Division who was attempting to verify the jackpot and the equipment pursuant to a policy of the Division to verify all the jackpots of $25,000 or more, a policy which the respondent casino hotel had agreed to abide by.

Following transmittal of the matter to the OAL and a prehearing conference, the parties engaged in discussions which have led to a settlement of the issues in dispute between respondents Cavilla and Pors and the Division. These parties entered into a Stipulation of Facts and Settlement which document is attached to this Initial Decision and made a part hereof. Pursuant to that agreement, the parties have stipulated the relevant facts concerning the background of the charges and the specific incident, as well as the involvement of Cavilla and Pors. Respondents have agreed that they were aware of the Division's request concerning verification of jackpots and further agree that their refusal to allow Division Agent Wilson to remove a logic board from the premises for inspection at the Division's facilities in Absecon constituted a violation of N.J.S.A. 5:12-78, 5:12-79a(3), and 5:12-80d. These regulations require that the licensee and all acting under its aegis cooperate with the Division in the performance of its duties, allow the seizure without notice and without warrant of equipment from a casino licensee and removal of such equipment from its premises and requires that all licensees have a continuing duty to provide assistance and information to the Division and cooperate in any inquiry or investigation conducted by the Division.

As a result of the agreement as to the violations, the parties further entered into a stipulation and agreement as to the penalties to be imposed. Mr. Cavilla is to be issued a letter of reprimand and fined $750, Mr. Pors is to be issued a letter of reprimand and fined $1,500.

Based upon the information contained in the stipulation, as well as the information available to the administrative law judge in connection with the proceedings against the entity, which information parallels the material contained in the Stipulation of

Facts and Settlement concerning the individual licensees, I **CONCLUDE** that the settlement entered into is a reasonable and proper disposition of the charges against the individual respondents and that it fully and completely resolves the issues in dispute between them within the confines of law. As such, the settlement will be accepted, subject to review by the Casino Control Commission. The parties are **ORDERED** to comply with the terms and conditions of the settlement. The respondents shall pay the fines to the Casino Control Commission in accordance with its directions. The fine is to be paid within 30 days of the issuance of the final order of the Commission. The letters of reprimand shall be issued in the normal fashion by the Commission. The contested case is **DISMISSED.**

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

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

7/14/89
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/17/89
DATE

Kim Warch
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 19 1989
DATE

Janice LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

ds

PETER N. PERRETTI, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
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Trenton, New Jersey 08625

By: Timothy C. Ficchi
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(609) 984-3969

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO.: CCC 00194-87
AGENCY DOCKET NO.: 87-177

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. GNOC, CORP., t/a THE GOLDEN NUGGET HOTEL AND CASINO, JOSEPH CAVILLA AND DONALD PORS, Respondents.	ORIGINAL STIPULATION OF FACTS AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Peter N. Perretti, Jr., Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter called "Division") by Timothy C. Ficchi, Deputy Attorney General, and Trent Dickey, Esq. of Sills, Cummis, Zuckerman, Radin, Tischmann, Epstein and Gross, Attorneys

for Respondents, Joseph Cavilla and Donald Pors, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

1. Respondent, GNOC Corp. (hereinafter called "GNOC") owns and operates the casino hotel formerly trading as the Golden Nugget Hotel and Casino. Said casino hotel has been renamed "Bally's Grand Hotel and Casino" as of October 8, 1987. GNOC is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and is now and at all times referenced herein has had its principal place of business lcoated at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. GNOC is the holder of a plenary casino license issued to it by the Casino Control Commission (hereinafter called the "Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter called the "Act") and the regulations thereunder. Said license was issued to GNOC effective September 21, 1985 and GNOC has been conducting its casino hotel operation pursuant to said license continually to date since that time including all times referenced herein.

3. GNOC is the holder of, and operates pursuant to a Certificate of Operation effective September 21, 1985. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitles GNOC to operate a

casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder.

4. Respondent, GNOC is the successor in interest in GNAC Corp. (hereinafter referred to as "GNAC"), t/a the Golden Nugget Hotel and Casino (hereinafter referred to as "Golden Nugget"). GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time, GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded GNAC's interest as a casino licensee as of May 1, 1984.

5. On March 1, 1987, Bally Manufacturing Corp. acquired the stock of GNAC. Among GNAC's assets was GNOC which holds the casino license.

6. Respondent Donald Pors is the holder of a valid New Jeresy casino key employee license, #1124-11, issued by the Commission on or about December 8, 1980 pursuant to Section 89 of the Act and said license has been renewed pursuant to Section 89 of the Act and said license has been renewed appropriated thereafter.

7. Respondent Donald Pors is currently employed at Bally's Park Place Hotel and Casino in the capacity of Slot Manager but at all times referenced herein was employed at GNOC in the capacity of Slot Manager.

8. According to GNOC's job compendium, a slot manager's primary responsibilities include assisting the Director of Slot Operations in managing the Slot Department; the training, scheduling and evaluating of Slot Department personnel; and supervising the performance of Slot Department personnel. In

addition, a slot manager is to be knowledgeable of the Casino Control Act, the regulations attendant thereto, and GNOC's internal controls. A true copy of GNOC's job compendium for the position of slot manager is attached hereto as Exhibit A.

9. Respondent Joseph Cavilla was the holder of a valid New Jersey Casino No. 2-1 license #3591-11, issued by the Commission on or about September 24, 1980 pursuant to Section 89 of the Act which expired November 1987. Respondent Joseph Cavilla is currently the holder of a New Jersey casino key employee license #3591-11, issued by the Commission in September, 1985 pursuant to Section 89 of the Act, and said license has been renewed appropriately thereafter.

10. Respondent Joseph Cavilla at all times referenced herein was employed by GNOC. Currently, he is employed at GNOC in the capacity of Assistant Slot Manager, but at all times referenced herein he was employed in the capacity of Chief Slot Mechanic.

11. According to GNOC's job compendium, a chief slot mechanic's primary responsibilities include knowledge of the slot machines and related equipment; analysis and determination of reason for slot equipment malfunctions; and the answering and resolution of all requests for assistance in technical problematic situations relevant to errant performance of slot equipment. A true copy of GNOC's job compendium for the position of chief slot mechanic is attached hereto as Exhibit B.

12. By letter dated May 7, 1985, Division had requested that all casino licensees withhold payment on all jackpots of $25,000 or more pending inspection of the slot machine in question by Division

personnel. By letter dated October 18, 1985, the Division specifically requested that Golden Nugget withhold jackpot payments until inspection has been completed by the Division. As a result of that correspondence, Golden Nugget Slot Manager Donald Pors, casino key employee license #1124-11, implemented the Division's request on a trial basis by way of inter-office correspondence dated November 1, 1985. True copies of the Division's letters of May 7, 1985 and October 18, 1985 and Golden Nugget's inter-office correspondence of November 1, 1985 are attached hereto and incorporated herein as Exhibits "C", "D" and "E" respectively.

13. On or about May 8, 1986, at approximately 11:25 p.m., patron John K. Raney won a progressive jackpot on slot machine #6532, location #1214-02, at Golden Nugget, in the amount of $1,092,861.56.

14. Pursuant to the procedure set forth in paragraph 5, supra, GNOC personnel informed the Division of the progressive jackpot win so that the jackpot could be verified.

15. Shortly thereafter, at approximately 11:58 p.m., Division Gaming Equipment Specialist ("GES") Bruce Wilson, arrived at Golden Nugget to verify that the slot machine had not been tampered with and that the jackpot was legitimate prior to payment of the jackpot to the patron.

16. Upon arrival, GES Wilson was requested by GNOC personnel to delay his inspection of the slot machine pending the taking of publicity pictures of the winning patron and Golden Nugget executives.

17. At approximately 1:00 a.m., GES Wilson began his inspection of the slot machine.

18. While in the process of verifying the jackpot, GES Wilson obtained, by use of a Kobetron device, the identification code of the EPROM chip within the slot machine. GES Wilson then checked the code of this EPROM chip against a list of codes which he carries which is supposed to contain the codes of all EPROM chips approved for use in Atlantic City slot machines. As the code for this EPROM chip was not on the list, GES Wilson found it necessary to remove the logic board from the slot machine in order to test it at the Division's electronic laboratory facility in Absecon, New Jersey.

19. GES Wilson then informed Chief Slot Mechanic Cavilla that he needed to remove the logic board from the premises in order to verify the M-3 status (i.e. whether that chip was approved for use in New Jersey) and consequently to verify the jackpot itself. Chief Slot Mechanic Cavilla told GES Wilson that he (Wilson) could not take the logic board off the premises. Mr. Cavilla then spoke to his supervisor, Slot Manager Donald Pors. Mr. Cavilla advised Mr. Pors that he (Cavilla) told GES Wilson he could not take the logic board at which time Mr. Pors agreed that GES Wilson should not take the board. Cavilla returned to GES Wilson and requested that he speak to Stefano Gelardi, Supervisor of the Division's Electronic Games Section. GES Wilson replied that it was unnecessary to contact his supervisor. A true copy of the June 12, 1986 sworn investigative interview of Joseph Cavilla and the June

26, 1986 sworn investigative interview of Donald F. Pors are attached hereto and incorporated herein as Exhibits "G" and "H", respectively.

20. Cavilla then requested that GES Wilson check the code of the M-3 EPROM chip in another slot machine in the same progressive link as the machine which paid the jackpot in order to determine the legitimacy of the M-3 chip.

21. During the course of GES Wilson's inspection of the slot machine, since he was not permitted to take the M-3 EPROM chip to the Absecon, New Jersey laboratory facility, he compared the winning slot machine's M-3 chip with one from another slot machine in the same progressive link as the winning machine. The comparison of the two M-3 chips revealed that they had identical programs within them. While a favorable comparison with another M-3 chip from the same progressive link would indicate that both chips have the same program and thereby would lessen the concern over the original M-3 chip being altered, a comparison could not conclusively determine that the chip had not been tampered with in any way.

22. At approximately 1:30 a.m., GES Wilson completed his inspection of the slot machine at GNOC. GES Wilson then informed Mr. Cavilla to keep the machine turned off until the M-3 status could be determined.

23. GES Wilson then proceeded to the Division's office in Absecon, New Jersey and researched the available information on the particular M-3 chip and found that the M-3 chip in question was

approved for use. As a result, GES Wilson verified the legitimacy of the jackpot.

24. The verification process undertaken by the Division representative and the Division's ability to determine if the jackpot was valid was hindered by GNOC's refusal of the Division representative's request to remove the logic board to test the EPROM.

25. By way of the correspondence referred to in paragraph 12, supra, Slot Manager Pors and Chief Slot Mechanic Cavilla were aware of the Division's request concerning verification of jackpots.

26. N.J.S.A. 5:12-78, which was effective at all times referenced herein provides that:

> Each licensee or registrant, or applicant for a license or registration under this act shall cooperate with the division in the performance of its duties.

27. N.J.S.A. 5:12-79a(3), which was effective at all times referenced herein, provides that the Division shall have the authority to seize, without notice and without warrant, any equipment from a casino licensee and remove it from the premises for purposes of inspection and examination upon approval of the Director.

28. N.J.S.A. 5:12-80d, which was effective at all times referenced herein, provides that:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the Commission or Division, and to cooperate in any inquiry or investigation conducted by the Division and any inquiry, investigation or

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

29. The refusal by Joseph Cavilla and Donald Pors, to allow the Division agent to remove the logic board from the premises for inspection at the Division's facilities in Absecon, New Jersey constituted a violation of N.J.S.A. 5:12-78, N.J.S.A. 5:12-79a(3) and N.J.S.A. 5:12-80d.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;

2. In consideration of the foregoing violations, the parties agree that Respondent Joseph Cavilla be issued a letter of reprimand and fined $750; and Respondent Donald Pors be issued a letter of reprimand and fined $1,500;

3. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 shall be in full and final settlement of the allegations set forth in the Division's Complaint as to Respondents Joseph Cavilla and Donald Pors only.

4. The stipulation shall be subject to the approval and acceptance of the Casino Control Commission;

The undersigned consents to the form and entry of this Stipulation of Facts and Settlement.

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

Dated: 5/25/89

By: Timothy C. Ficchi
Timothy C. Ficchi
Deputy Attorney General

SILLS, CUMMIS, ZUCKERMAN, RADIN,
TISCHMAN, EPSTEIN AND GROSS
Attorneys for Respondents
Joseph Cavilla and Donald Pors

Dated: 5/9/89

By:
Trent S. Dickey, Esq.

Dated:

Joseph Cavilla

Dated:

Donald Pors

041089/4CB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 194-87
AGENCY DKT. NO. 87-177

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
GNOC CORP., t/a GOLDEN NUGGET
HOTEL AND CASINO, JOSEPH CAVILLA
AND DONALD PORS,
Respondents.

Timothy C. Ficchi, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Steven Pasternak, Esq., for respondent (Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau and Falkin, attorneys)

Record Closed: May 31, 1989 Decided: July 14, 1989

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

This matter comes before the Office of Administrative Law following transmittal from the Casino Control Commission pursuant to N.J.S.A. 52:14F-1 et seq. The dispute involves a complaint filed by the Division of Gaming Enforcement ("Division") on October 27, 1986. The complaint charged that the respondent, GNOC Corp., which owns and operates the former Golden Nugget Hotel and Casino pursuant to a certificate of Operation effective September 21, 1985, violated provisions of the Casino Control Act,

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N.J.S.A. 5:12-1 et seq. ("Act") and the regulations issued pursuant thereto, more specifically N.J.S.A. 5:12-78, 79a(3) and 80d, in connection with an incident reportedly occurring on or about May 8-9, 1986. The circumstances involved arose when patron John K. Raney won a progressive jackpot on slot machine No. 6532, location No. 1214-02 at the Golden Nugget at approximately 11:25 p.m., on May 8, 1986. The jackpot was in the amount of $1,920,861.56. The complaint alleges that following Rainey's win the respondent corporation and two of its employees, Cavilla and Pors, respectively Chief Slot Mechanic and Slot Manager and both holders of casino key employee licenses, interfered with, refused to cooperate with, and thwarted efforts of the Division, through its Division Gaming Equipment Specialist Bruce Wilson, to engage in procedures necessary to verify the legitimacy of the jackpot win. More specifically, the complaint contends that the Division had requested the respondent and other casinos to withhold payment of all jackpots in the amount of $25,000 or more pending inspection of the slot machine in question by Division personnel. According to the complaint the respondent GNOC had agreed to comply with this request. Despite this agreement, on May 8-9, 1986, when Mr. Wilson attempted to remove a M-3 chip from the machine in question in order to verify it and then sought to remove the logic board from the premises when the M-3 chip could not be verified through on-site procedures, respondent GNOC, through its agents Cavilla and Pors, refused to permit said removal. This action is alleged to violate specific requirements imposed upon casino licensees and entities to "cooperate with the Division in the performance of its duties" and to "provide any assistance or information required by the Commission or Division, and to cooperate in any inquiry or investigation conducted by the Division...."

Respondent GNOC disputes the allegations of statutory violations and argues that if any violations occurred they are of a relatively insignificant nature and should not subject the respondent GNOC to a serious financial penalties under the penalty provisions of the Act, N.J.S.A. 5:12-129.

The matter was orginally transmitted to the Office of Administrative Law in January 1987. Subsequently extensive delays in the processing of the case occurred due to the transfer of the ownership of the casino entity and various complex legal concerns arising therefrom, as well as substantial scheduling difficulties involving the attorneys and judges schedules. A prehearing conference was held on April 6, 1987. Extensive discovery, including motions, followed. An order with respect to certain discovery was

entered on May 27, 1988, denying depositions. In addition, an order of September 20, 1988, was entered adjourning the matter at the request of the respondents, over the objection of petitioner. Following this adjournment, the parties entered into extensive settlement negotiations. Ultimately respondents Cavilla and Pors entered into settlements with the petitioner. Petitioner and respondent GNOC entered into a stipulation of facts filed with the administrative law judge on April 6, 1989. Thereafter, briefs and reply briefs were filed on behalf of the parties and the record was closed on May 31, 1989.[1]

ISSUES

The prehearing of April 6, 1987, was conducted by Honorable Lillard E. Law, ALJ. The order recites the issues as follows:

1. Whether respondent GNOC failed to comply with the Division's request that it be allowed to inspect slot machine No. 6532, location No. 1214-02 prior to payment of a jackpot greater than $25,000.00? N.J.S.A. 5:12-78; N.J.S.A. 5:12-80d.

2. Whether respondent GNOC's employees refused to allow an agent of the Division to remove a logic board from GNOC premises to verify a jackpot? N.J.S.A. 5:12-78; N.J.S.A. 5:12-79a(3); N.J.S.A. 5:12-80d.

[1]A request by respondent's counsel for oral argument was denied because it appeared that a further extensive delay would be necessitated due to the schedule of the deputy attorney general. After reviewing the stipulation and briefs, the administrative law judge concluded that oral argument appeared unnecessary as the parties had addressed the factual and legal considerations extensively and the delay necessitated in scheduled the oral argument would be unreasonable. In addition the administrative law judge advised counsel that should he deem it appropriate in the course of his review and preparation of the initial decision, oral argument would be scheduled.

STIPULATION OF FACTS

The parties entered into a stipulation of the following items which are found to be facts for the purposes of this proceeding.

1. Respondent, GNOC Corp., (hereinafter called "GNOC"), owns and operates the casino hotel formerly known as the Golden Nugget Hotel and Casino. GNOC was at all times referenced herein a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. At all times referenced herein, GNOC was the holder of a casino license issued to it by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Act and Commission regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984, and GNOC was conducting its casino hotel operation pursuant to said license at all times referenced herein.

3. At all times referenced herein, GNOC was the holder of, and operated pursuant to, a Certificate of Operation effective May 1, 1984. GNOC conducted its casino operations pursuant to said Certificate of Operation at all times referenced herein. Said Certificate of Operation entitled GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

4. GNOC is the successor in interest to GNAC Corp., t/a The Golden Nugget Hotel and Casino. GNAC was the holder of the Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded GNAC's interest as casino licensee as of May 1, 1984.

5. Respondent Donald Pors is the holder of a valid New Jersey casino key employee license, #1124-11, issued by the Commission on or about

December 8, 1980, pursuant to Section 89 of the Act and said license has been renewed appropriately thereafter.

6. Respondent Donald Pors, at all times referenced herein, was employed by GNOC in the capacity of Slot Manager.

7. According to GNOC's then-existing jobs compendium, a slot manager's primary responsibilities included assisting the Director of Slot Operations in managing the Slot Department; the training, scheduling and evaluating of Slot Department personnel; and supervising the performance of Slot Department personnel. In addition, a slot manager is to be knowledgeable of the Casino Control Act, the regulations attendant thereto, and GNOC's internal controls. A true copy of GNOC's jobs compendium for the position of slot manager is attached hereto and incorporated herein as Exhibit "A".

8. Respondent Joseph Cavilla is the holder of a valid New Jersey casino key employee license, #3591-11, issued by the Commission on or about September 24, 1980 pursuant to Section 89 of the Act and said license has been renewed appropriately thereafter.

9. Respondent Joseph Cavilla, at all times referenced herein, was employed by GNOC in the capacity of Chief Slot Mechanic.

10. According to GNOC's then-existing jobs compendium, a chief slot mechanic's primary responsibilities included knowledge of the slot machines and related equipment; analysis and determination of reason for slot equipment malfunctions; and the answering and resolution of all requests for assistance in technical problematic situations relevant to errant performance of slot equipment. A true copy of GNOC's jobs compendium for the position of chief slot mechanic is attached hereto and incorporated herein as Exhibit "B".

11. By letter dated May 7, 1985, the Division had requested that all casino licensees call the Division for an inspection of any jackpot over $25,000

prior to the time in which the patron is paid. By letter dated October 18, 1985, the Division requested that Golden Nugget cooperate with the aforementioned request and withhold jackpot payments until inspection has been completed by the Division. Golden Nugget Slot Manager Donald Pors implemented the foregoing request on a trial basis by way of inter-office correspondence dated November 1, 1985. True copies of the Division's letters of May 7, 1985 and October 18, 1985, and Golden Nugget's inter-office correspondence of November 1, 1985, are attached hereto and incorporated herein as Exhibits "C", "D" and "E" respectively.

12. On or about May 8, 1986, at approximately 11:25 p.m., patron John K. Raney, won a progressive jackpot on slot machine #6532, location #1214-02, at Golden Nugget, in the amount of $1,092,861.56.

13. Pursuant to the procedure set forth in paragraph 11, supra, GNOC personnel informed the Division of the progressive jackpot win so that the jackpot could be verified.

14. At approximately 11:58 p.m., Division Gaming Equipment Specialist ("GES") Bruce Wilson arrived at Golden Nugget to verify that the slot machine had not been tampered with and that the jackpot was legitimate prior to payment of the jackpot to the patron.

15. Upon arrival, GES Wilson was requested by Chief Slot Mechanic Joseph Cavilla to postpone his inspection of the slot machine until publicity photographs and other public relations activity around the slot machine had been completed by GNOC personnel.

16. In accordance with the aforementioned request, GES Wilson postponed commencement of his inspection of the slot machine for approximately an hour.

17. As testified by respondent Pors under oath at his June 26, 1986 interview, (a) Pors had left the area of the slot machine to attend to duties; (b) upon returning to the slot machine area, Pors spoke with

respondent Cavilla; (c) Pors interpreted what Cavilla said to him as meaning that the machine was checked and clear.

18. At approximately 1:00 a.m., GES Wilson began his inspection of the slot machine.

19. At 1:00 a.m., respondent Pors authorized GNOC to pay patron Raney. Per the patron's request, GNOC paid him $10,862 in cash and placed the remainder of his jackpot win of $1,082,000 on customer deposit. A copy of a report, dated June 20, 1986, prepared by Division agent William Frasco, with attached exhibits (describing the manner and time of payment of patron Raney's jackpot) is attached hereto and incorporated herein as Exhibit "I".

20. While in the process of verifying the jackpot, GES Wilson obtained, by use of a Kobetron device, the identification code of the EPROM chip (an M-3 chip, i.e. a memory chip) within the slot machine. GES Wilson then checked the code of this EPROM chip against a list of codes which is supposed to contain all EPROM chips which are in an approved status for use in Atlantic City slot machines. This list did not contain codes of EPROM's which were in a grace period, as the instant chip was. Though acceptable to be preent in an already existing slot machine grace period chips were in the process of being phased out. As the code for the instant EPROM chip was not on the list of approved codes, GES Wilson decided to remove the logic board from the slot machine to test it at the Division's electronic laboratory facility in Absecon, New Jersey.

21. GES Wilson then informed Chief Slot Mechanic Cavilla that he believed there was a need to remove the logic board from the premises to verify the M-3 status (i.e., whether the chip was approved for use) and consequently to verify the jackpot itself. Respondent Cavilla refused the request because he had heard that on another occasion the Division had damaged a logic board when removed from a different casino. The incident that Cavilla heard of, however, did not in fact result in damage to a board. Cavilla then informed his supervisor, Slot Manager Pors, who

was not present during GES Wilson's request and subsequent denial, and asked Pors "Is that all right?" Respondent Pors responded that that was fine, no problem. Cavilla returned to GES Wilson and requested that he (Cavilla) speak to Stefano Gelardi, Supervisor of the Division's Electronic Games Section. GES Wilson replied that it was unnecessary to contact his supervisor. A true copy of the June 12, 1986 sworn investigative interview of Donald F. Pors is attached hereto and incorporated herein as Exhibits "G" and "H", respectively.

22. Cavilla then requested that, as he has seen done by other Division representatives on some prior occasions, GES Wilson check the code of the M-3 EPROM chip in another slot machine in the same progressive link as the machine which paid the jackpot in order to determine the legitimacy of the M-3 chip.

23. During the course of GES Wilson's inspection of the slot machine, GES Wilson compared the winning slot machine's M-3 chip with one from another slot machine in the same progressive link as the winning machine. The comparison of the two M-3 chips revealed that the two chips had identical programs within them.

24. GES Wilson performed the comparison described in paragraph 23, supra, because he could not take the EPROM chip in question back to the Division's laboratory facility and he wanted to lessen his concern of an invalid or altered chip. A comparison could not conclusively determine that the chip had not been tampered with in any way. GES Wilson did not perform the comparison because of any instruction or request by respondent Cavilla.

25. At approximately 1:30 a.m., GES Wilson completed his inspection of the slot machine at GNOC. GES Wilson then informed Mr. Cavilla and Casino Control Commission Inspector James Morley to keep the machine turned off until the M-3 status could be determined.

26. GES Wilson then proceeded to the Division's office in Absecon, New Jersey, and researched the available information on the particular M-3 chip and found, via the Division's database, that the M-3 chip in question was a permissible chip, which happened to be in the grace period. GES Wilson then contacted his supervisor, GES Bill Wilcox, who advised Wilson, at approximately 2:00 a.m., that a grace period chip status would not affect the payment of the jackpot.

27. GES Wilson contacted a Casino Control Commission representative on duty at GNOC at approximately 2:10 a.m. and informed the Commission representative that the jackpot had been verified by the Division.

DISCUSSION AND ANALYSIS

In light of the facts which have been stipulated by the parties, there is no dispute concerning the time sequence of the events occuring on May 8-9, 1986. Bountiful fortune smiled upon Mr. Raney at 11:25 p.m. Gaming Equipment Specialist Wilson arrived at the Golden Nugget to verify that there had been no tampering with the slot machine and that the jackpot was legitimate at approximately 11:58 p.m. He then spoke to Cavilla and was asked to postpone his inspection because the publicity department of the casino was in the process of taking publicity photographs and engaging in other public relations activities, which, according to testimony contained in the transcript of Donald F. Pors interview with the Division on June 26, 1986, was extended due to a lengthy telephone interviews with Raney and the publicity director for the hotel. Wilson did not begin his inspection of the machine until 1:00 a.m. At approximately the same time, Pors, acting upon his understanding of what Cavilla had said to him and his belief that Cavilla had told him that the machine was checked and cleared, authorized payment of the jackpot to Raney. Thus there is no question but that, for whatever reason, the patron was paid the proceeds of the jackpot prior to the time that Wilson had completed his inspection, perhaps even slightly before he had actually begun the inspection, although this exact question cannot be satisfactorily answered and is really of no great significance.

In addition to the above agreed upon facts, the stipulation also resolves any question which might have existed as to whether the Division's request of October 18, 1985, to GNOC that it withhold payment of jackpots of $25,000 or more pending

inspection of the machine was known to the entity and to its employees Pors and Cavilla. Thus, although it might be of no legal significance, none of the respondents in this proceeding claim that they did not know that the policy existed or that GNOC had not agreed to comply with it.

The first count of the complaint charges GNOC with violating N.J.S.A. 5:12-78 and 5:12-80d in regard to its failure to comply with the request that its not pay jackpots of this type prior to inspection of the slot machine in question and verfiication of the validity of the jackpot.

N.J.S.A. 5:12-78 provides that:

> "Each licensee or registrant, or applicant for a license registration under this Act shall cooperate with the Division in the performance of its duties."

N.J.S.A. 5:12-80d requires:

> "All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this Act shall have the continuing duty to provide any assistance or information required by the Commission or Division, and to cooperate in any inquiry or investigation conducted by the Division and any inquiry, investigation or hearing conducted by the Commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or other person who shall be qualified pursuant to this Act refuses to comply, the application, license or registration qualification of such person may be denied or revoked by the Commission."

In defense of its actions concerning the premature payout of the jackpot respondent argues that it is not guilty of any impropriety "simply because respondent Pors mistakenly authorized a payout based upon his conversation with respondent Cavilla, by virtue of which he mistakenly believed the verification had been completed." Respondents hearing brief at page 6. Respondent GNOC points out that it implemented the voluntary program requested by the Division, notified the Division in a timely fashion of Raney's win, and had the intention of cooperating with the Division at all times in connection with this policy, albeit in this instance a mis-communication thwarted that intention. Thus, respondent GNOC's defense as to this really is more in the form of a mitigation of its liability than of a denial that it in fact, for whatever reason, paid the jackpot prior to the time when it had agreed that it would do so.

Based upon the evidence presented, there can be no question but that the respondent GNOC did pay Mr. Raney his jackpot prior to the time when Mr. Wilson was able to go through the steps necessary to check the machine and verify the legitimacy of the win. In doing so, GNOC failed to cooperate with the Division in its responsibility of assuring the integrity of gaming activities. Although the respondent GNOC clearly had the intention and desire to cooperate, although I find no basis for concluding that it in any way encouraged, suggested, or implied through any corporate action with regards to its employees that it did not wish to comply, its premature payout had the affect of undermining the procedure agreed upon between the Division and respondent. In addition, by its action GNOC did not assist the Division in the manner in which the Division had requested with respect to the Division's investigation of the legitimacy of the jackpot. The Division had advised respondent that as part of its duties it intended to verify these jackpots and that it was requested cooperation from the entity in this process. After agreeing to comply and assist, GNOC failed to do so. Thus, without regard at this point to the question of how serious the violation is and what if any penalty is appropriate, I **FIND** that the actions of respondent's agents, for whose conduct it is responsible under the doctrine of respondeat superior, did violate both the respondents agreement and its responsibility to cooperate with the Division in the performance of the Division's investigative duties, in violation of respondents obligations pursuant to N.J.S.A. 5:12-78 and 80d.

The second basis for the complaint deals with the alleged failure of GNOC to cooperate and assist in connection with the examination of the logic board as a portion of Wilson's verification of the jackpot. The stipulation establishes that Wilsons' request to remove the board occurred after he determined through use of his Kobetron device that the EPROM chip was not on the list of approved chips for use in the machines. Although it was later determined that this EPROM was a grace period chip and was acceptable, Wilson was unable to verify that through use of the information which he had available to him at the casino. When he made his request to Cavilla to remove the logic board in order to verify the chip back at the Division facility at Hovpark, Cavilla refused based upon the rumors and stories that he had heard concerning an alleged incident when the Division supposedly damaged the logic board which it had removed from the Claridge. According to the stipulation after Cavilla refused Wilson permission to remove the board he spoke with slot manager Pors, told him about the request and his denial and, again according to the stipulation and the testimony of Cavilla in his sworn investigative interview of

June 12, 1986, he asked Pors "is that all right?" Pors responded "that was fine, no problem." Cavilla then asked Wilson if he could speak to the supervisor of the Division of the Electronic Games Section, Stefano Gelardi. Wilson considered this unnecessary and that contact did not occur. Cavilla then asked Wilson to undertake a further verification procedure by checking the code on the M-3 EPROM chip on another slot machine in the same progressive link, a procedure which had been used on other occasions. Wilson did this, but the comparison revealed that the two chips had identical programs. Apparently Wilson was not satisfied as to the validity of the chips and felt that at that point he could not conclude that the jackpot was legitimate. Thus, the refusal of Cavilla, ratified as it was by Pors, prevented Wilson from removing the logic board and completing what he believed were necessary procedures to conclude his investigation on behalf of the Division as to the jackpot.

The respondent suggests that Cavilla had no intention to refuse Wilson permission to engage in verification procedures and points out that Cavilla attempted "perhaps inarticulately" to have Wilson employ a "less drastic procedure." Respondent then argues that any misunderstanding was "clearly unintentional." Further, respondent points to Pors statement that had Cavilla denied the request outright "he would have 'over stepped his ground there'".

The difficulty with the respondent's position is that the stipulated facts make it quite clear that for whatever reason, whether through miscommunication or otherwise, Mr. Cavilla made it quite plain to Mr. Wilson that he could not remove the logic board from the premises. Since Wilson believed that such removal was necessary in order to effectuate verification in this instance and there is no evidence that this determination was an arbitrary, capricious and unreasonable determination, then Cavilla's refusal did in fact interfere with verification efforts. The refusal denotes a lack of cooperation with the Division's reasonable efforts to engage in the verification process, efforts which it had previously advised the respondent of and requested and received from the respondent assurance of its intention to cooperate. Thus, in the absence of some other defense, the refusal to permit removal would constitute a violation of N.J.S.A. 5:12-78 and N.J.S.A. 5:12-80d.

Respondent suggests that Wilson was attempting an unauthorized seizure, relying upon the language of N.J.S.A. 5:12-79(a) which states that:

> The Division and its employees and agents, upon approval of the Director, shall have the authority, without notice and without warrant: . . .
>
> (re) To seize summarily and remove from such premises and impound any such equipment or supplies for the purpose of examination and inspection.

In reviewing the constitutionality of this provision of the Act, the New Jersey Supreme Court in In re Martin, 90 N.J. 295, 312 (1982) emphasized, in upholding the constitutionality of the warrantless search provision, that "such search may occur only with the approval of the Director."

The Division, while not pointing to any specific documentation establishing the authorization of Wilson to remove the logic board, argues that Wilson, as a professionally trained Gaming Equipment Specialist and a member of the Division's Electronics Games Section, had "delegated authority from the Director to seize equipment in those instances where the Gaming Equipment Specialist during the course of authorized assignments believes that there may be faulty or improperly altered gaming equipment and can remove that gaming equipment from the casino premises in the effort to protect the public or the casino itself."

In considering whether there is anything unauthorized about Wilson's attempt to seize and remove the logic board, the context in which his actions occured must be considered. In this situation the respondent casino had advised the Division that a patron had won a jackpot of in excess of $1,000,000. The casino acted pursuant to a request of the Division that it be so advised so that it could perform verification procedures to assure the integrity of the jackpot. The casino had agreed to cooperate in that verification process. The gaming equipment specialist came to the casino for the specific purpose of verifying the jackpot by examining the machinery, including the EPROM. In the course of his verification activities he determined that a question existed as to the M-3 chip. He communicated this difficulty to Cavilla, a representative of the respondent. He told Cavilla that he wished to remove the logic board to continue verification procedures. There is no suggestion that removal of the logic board was not a rational, reasonable step in this process. In that circumstance, and given the context in which all this occured, for the casino to suggest that Wilson needed specific authorization from the Director to remove the board so that he could continue his verification process is a

position without merit. Where the respondent agreed to participate in the Division's verification program, and where it knew that this was a program aimed at assuring the integrity of gaming, and knew that verification involved some technical and mechanical procedures to assure that the internal workings of the machinery, including memory chips, were properly functioning and legitimate, the respondent certainly must have understood that whatever reasonable verification processes were necessary in order to assure validity would occur. This being so, and given the extremely uncertain basis for its fears as to the possibility of damage to the logic board, there was no basis upon which GNOC could have properly refused Mr. Wilson's request. There was nothing unreasonable and unconstitutional in this request.

Based on the evidence presented, I am convinced that although there is no indication whatsoever that Cavilla and/or Pors were attempting to hide anything, obstruct anything, or otherwise interfere intentionally with the activities of Wilson, that in fact Cavilla's refusal, with Pors' acquiescence, albeit perhaps mistaken, did have the affect of preventing Wilson from engaging in reasonable verification activities. There is no question but that Cavilla's refusal was intentional, in the sense that he specifically did not want Wilson to remove the logic board from the premises, although that intentional activity did not arise out of any devious, illicit, or reprehensible foundation. There is no evidence that the activities of Cavilla and Pors arose from any scheme or plan, deviousness or illegality, attempt to please a customer, or for that matter to please their superiors. It appears that they, particularly Cavilla, acted out of a perhaps overzealous sense of protectiveness for the casino's investment in its machinery and acted upon some fears generated by apparently unfounded rumor and hearsay information.

For the reasons express, I **FIND** that the petitioner has established that the respondent did violated N.J.S.A. 5:12-78 and 5:12-80d.

PENALTY

The appropriate penalty to be imposed upon respondent GNOC for its failure of cooperation must be determined in light of the nature of the program involved, the nature of the lack of cooperation, and the evidence which illuminates the reason for the lack of cooperation. As noted above, in this situation nothing about the activities of the corporate entity, its agents and employees gives any rise to a concern that anyone was

attempting to cover up some misdeed, conceal some irregularity, profit either themselves, the entity, or any gambler, etc. In addition, although as noted it appears that Cavilla and to a lesser extent Pors acted in a protective fashion toward the casino's investment, there is no evidence that they were devious in their dealings with the Division representative nor is there any evidence that their conduct led to any actual frustration of the Division's mandate. While there was a delay in the verification process resulting from the refusal to permit the removal of the logic board, in fact Wilson was able to determine that the EPROM chip was a legitimate one.

Having considered all of the circumstances, I am convinced that the penalty to be imposed upon GNOC in this case must be a minimal one. While the parties have cited many other cases in which penalties have been imposed on casino entities for a failure to cooperate with, or in some cases an active interference with, the investigative and regulatory activities of the Division and/or the Commission, in this case I **CONCLUDE** that the interference, while actual, was of a different tone, resulted from different motivations, and was relatively less significant in kind. As a result, it is **ORDERED** that a penalty of $7,500 be imposed on the respondent casino entity for each of the two violations, for a total of a $15,000 penalty. This penalty is set with the understanding that a lack of cooperation on the part of a casino entity and/or its employees with the investigative activities of either the Division or Commission is in and of itself of a serious nature. However, one cannot lump all such non-cooperation or limited cooperation situations together and automatically impose substantial penalties merely because the violations are labeled as "lack of cooperation." A sensitivity to the specific fact pattern, the motivations, intentions, understandings and misunderstandings of the persons involved must be considered. In this case, there is little, if any reason, to conclude that the actions of Cavilla, Pors or the entity were meant to purposely interfere, a characterization which cannot be placed upon many of the other instances of lack of cooperation and/or interference which were the bases of other cases cited in counsel's briefs.

It is **ORDERED** that respondent GNOC Corp., t/a Golden Nugget Hotel and Casino, shall pay a penalty of $7,500 for its violation of N.J.S.A. 5:12-78 and 5:12-80d in connection with its failure to comply with the Division's request that it be allowed to inspect slot machine No. 6532, location No. 1214-02 prior to payment of a jackpot greater than $25,000. In addition, respondent shall pay an Administrative Penalty of $7,500 for its

violation of N.J.S.A. 5:12-78, 79a(3) and 80d in connection with the refusal of its employees, Cavilla and Pors, to allow an agent of the Division to remove the logic board from GNOC premises in order to effectuate verification of a jackpot in conformity with the jackpot verification procedures set forth by the Division and agreed to by the respondent. The penalties shall be paid to the Casino Control Commission in accordance with its directions no later than 30 days from the date of the issuance of the final decision of the Casino Control Commission. In addition, the respondent shall prepare and circulate to all relevant employees a statement concerning the responsibilities and obligations of such employees in connection with any and all Commission and Division verification and investigative procedures now in effect.

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

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

July 14, 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

7/17/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 18 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

EVIDENCE LIST

Exhibit A	Job Description for Chief Slot Mechanic
Exhibit B	Job Description for Assistant Slot Manager/Administration
Exhibit C	Letter of May 7, 1985, from Frederic E. Gushin, Deputy Attorney General
Exhibit D	Letter of October 18, 1985, from Frederic E. Gushin, Deputy Attorney General
Exhibit E	Inter-Office correspondence of November 1, 1985, from Don Pors
Exhibit F	None
Exhibit G	Transcript of interview of Joseph Cavilla of June 12, 1986
Exhibit H	Transcript of interview of Donald F. Pors of June 26, 1986
Exhibit I	Investigation Reports of Agent William Frasco with attached exhibits listed on Table of Exhibits, Exhibits 1 through 14

RECEIVED
STATE OF N.J.
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JUL 14 11 05 PM '89

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By: Steven Pasternak, Esq.
On Behalf of Respondent
GNOC, Corp.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET: CCC 00194-87
AGENCY DOCKET: 87-177

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, v. GNOC CORP. t/a GOLDEN NUGGET HOTEL AND CASINO, JOSEPH CAVILLA AND DONALD PORS, Respondents.	CIVIL ACTION STIPULATION OF FACTS

With the above-captioned matter having been discussed by and between the parties involved, Peter N. Perretti, Jr., Attorney

General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Timothy C. Ficchi, Deputy Attorney General, and Steven Pasternak, Esq., of Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau & Falkin, P.A., Attorneys for Respondent GNOC, Corp. t/a Golden Nugget Hotel and Casino, it is hereby consented to and agreed by and between the parties that the following facts have been stipulated:

1. Respondent, GNOC, Corp. (hereinafter called "GNOC") owns and operates the casino hotel formerly known as the Golden Nugget Hotel and Casino. GNOC was at all times referenced herein a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. At all times referenced herein, GNOC was the holder of a casino license issued to it by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Act and Commission regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984, and GNOC was conducting its casino hotel operation pursuant to said license at all times referenced herein.

3. At all times referenced herein, GNOC was the holder of, and operated pursuant to, a Certificate of Operation effective May 1, 1984. GNOC conducted its casino operations pursuant to said

Certificate of Operation at all times referenced herein. Said Certificate of Operation entitled GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

4. GNOC is the successor in interest to GNAC Corp. t/a The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded GNAC's interest as casino licensee as of May 1, 1984.

5. Respondent Donald Pors is the holder of a valid New Jersey casino key employee license, #1124-11, issued by the Commission on or about December 8, 1980 pursuant to Section 89 of the Act and said license has been renewed appropriately thereafter.

6. Respondent Donald Pors, at all times referenced herein, was employed by GNOC in the capacity of Slot Manager.

7. According to GNOC's then-existing jobs compendium, a slot manager's primary responsibilities included assisting the Director of Slot Operations in managing the Slot Department; the training, scheduling and evaluating of Slot Department personnel; and supervising the performance of Slot Department personnel. In addition, a slot manager is to be knowledgeable of the Casino Control Act, the regulations attendant thereto, and GNOC's internal controls. A true copy of GNOC's jobs compendium for the position of slot manager is attached hereto and incorporated herein as Exhibit "A".

8. Respondent Joseph Cavilla is the holder of a valid New Jersey casino key employee license, #3591-11, issued by the Commission on or about September 24, 1980 pursuant to Section 89 of the Act and said license has been renewed appropriately thereafter.

9. Respondent Joseph Cavilla, at all times referenced herein, was employed by GNOC in the capacity of Chief Slot Mechanic.

10. According to GNOC's then-existing jobs compendium, a chief slot mechanic's primary responsibilities included knowledge of the slot machines and related equipment; analysis and determination of reason for slot equipment malfunctions; and the answering and resolution of all requests for assistance in technical problematic situations relevant to errant performance of slot equipment. A true copy of GNOC's jobs compendium for the position of chief slot mechanic is attached hereto and incorporated herein as Exhibit "B".

11. By letter dated May 7, 1985 the Division had requested that all casino licensees call the Division for an inspection of any jackpot over $25,000 prior to the time in which the patron is paid. By letter dated October 18, 1985, the Division requested that Golden Nugget cooperate with the aforementioned request and withhold jackpot payments until inspection has been completed by the Division. Golden Nugget Slot Manager Donald Pors implemented the foregoing request on a trial basis by way of inter-office correspondence dated November 1, 1985. True copies of the

Division's letters of May 7, 1985 and October 18, 1985 and Golden Nugget's inter-office correspondence of November 1, 1985 are attached hereto and incorporated herein as Exhibits "C", "D" and "E" respectively.

12. On or about May 8, 1986, at approximately 11:25 p.m., patron John K. Raney, won a progressive jackpot on slot machine #6532, location #1214-02, at Golden Nugget, in the amount of $1,092,861.56.

13. Pursuant to the procedure set forth in paragraph 11, supra, GNOC personnel informed the Division of the progressive jackpot win so that the jackpot could be verified.

14. At approximately 11:58 p.m., Division Gaming Equipment Specialist ("GES") Bruce Wilson arrived at Golden Nugget to verify that the slot machine had not been tampered with and that the jackpot was legitimate prior to payment of the jackpot to the patron.

15. Upon arrival, GES Wilson was requested by Chief Slot Mechanic Joseph Cavilla to postpone his inspection of the slot machine until publicity photographs and other public relations activity around the slot machine had been completed by GNOC personnel.

16. In accordance with the aforementioned request, GES Wilson postponed commencement of his inspection of the slot machine for approximately an hour.

17. As testified by Respondent Pors under oath at his June 26, 1986 interview, (a) Pors had left the area of the slot machine to attend to duties; (b) upon returning to the slot machine area,

Pors spoke with Respondent Cavilla; (c) Pors interpreted what Cavilla said to him as meaning that the machine was checked and clear.

18. At approximately 1:00 a.m., GES Wilson began his inspection of the slot machine.

19. At 1:00 a.m. Respondent Pors authorized GNOC to pay patron Raney. Per the patron's request GNOC paid him $10,862 in cash and placed the remainder of his jackpot win of $1,082,000 on customer deposit. A copy of a report, dated June 20, 1986 prepared by Division Agent William Frasco, with attached exhibits (describing the manner and time of payment of patron Raney's jackpot) is attached hereto and incorporated herein as Exhibit "I".

20. While in the process of verifying the jackpot, GES Wilson obtained, by use of a Kobetron device, the identification code of the EPROM chip (an M-3 chip, i.e. a memory chip) within the slot machine. GES Wilson then checked the code of this EPROM chip against a list of codes which is supposed to contain all EPROM chips which are in an approved status for use in Atlantic City slot machines. This list did not contain codes of EPROM's which were in a grace period, as the instant chip was. Though acceptable to be present in an already existing slot machine grace period chips were in the process of being phased out. As the code for the instant EPROM chip was not on the list of approved codes, GES Wilson decided to remove the logic board from the slot machine to test it at the Division's electronic laboratory facility in Absecon, New Jersey.

21. GES Wilson then informed Chief Slot Mechanic Cavilla that he believed there was a need to remove the logic board from the premises to verify the M-3 status (i.e. whether the chip was approved for use) and consequently to verify the jackpot itself. Respondent Cavilla refused the request because he had heard that on another occasion the Division had damaged a logic board when removed from a different casino. The incident that Cavilla heard of, however, did not in fact result in damage to a board. Cavilla then informed his supervisor, Slot Manager Pors, who was not present during GES Wilson's request and subsequent denial, and asked Pors "Is that all right?" Respondent Pors responded that that was fine, no problem. Cavilla returned to GES Wilson and requested that he (Cavilla) speak to Stefano Gelardi, Supervisor of the Division's Electronic Games Section. GES Wilson replied that it was unnecessary to contact his supervisor. A true copy of the June 12, 1986 sworn investigative interview of Joseph Cavilla and the June 26, 1986 sworn investigative interview of Donald F. Pors are attached hereto and incorporated herein as Exhibits "G" and "H", respectively.

22. Cavilla then requested that, as he has seen done by other Division representatives on some prior occasions, GES Wilson check the code of the M-3 EPROM chip in another slot machine in the same progressive link as the machine which paid the jackpot in order to determine the legitimacy of the M-3 chip.

23. During the course of GES Wilson's inspection of the slot machine, GES Wilson compared the winning slot machine's M-3 chip with one from another slot machine in the same progressive link as

the winning machine. The comparison of the two M-3 chips revealed that the two chips had identical programs within them.

24. GES Wilson performed the comparison described in paragraph 23, supra, because he could not take the EPROM chip in question back to the Division's laboratory facility and he wanted to lessen his concern of an invalid or altered chip. A comparison could not conclusively determine that the chip had not been tampered with in any way. GES Wilson did not perform the comparison because of any instruction or request by Respondent Cavilla.

25. At approximately 1:30 a.m., GES Wilson completed his inspection of the slot machine at GNOC. GES Wilson then informed Mr. Cavilla and Casino Control Commission Inspector James Morley to keep the machine turned off until the M-3 status could be determined.

26. GES Wilson then proceeded to the Division's office in Absecon, New Jersey and researched the available information on the particular M-3 chip and found, via the Division's database, that the M-3 chip in question was a permissible chip, which happened to be in the grace period. GES Wilson then contacted his supervisor, GES Bill Wilcox, who advised Wilson, at approximately 2:00 a.m., that a grace period chip status would not affect the payment of the jackpot.

27. GES Wilson contacted a Casino Control Commission representative on duty at GNOC at approximately 2:10 a.m. and informed the Commission representative that the jackpot had been verified by the Division.

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

By: Timothy C. Ficchi /cb
Timothy C. Ficchi
Deputy Attorney General

GREENBERG, MARGOLIS, ZIEGLER,
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and FALKIN
Attorneys for Respondent GNOC, Corp.

By: Steven Pasternak
Steven Pasternak, Esq.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-CSI-6
APPLICATION NO. 2528-70
VENDOR I.D. NO. 20483
OAL DOCKET NO. CCC 8084-88
ORDER NO. 89-47-20

APPLICATION OF GOURMET BOUQUETS, INC. FOR A CASINO SERVICE INDUSTRY LICENSE AND QUALIFICATION OF ARMANDO, IRENE AND CHRISTOPHER TORTU

AMENDED ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 7th day of December 1989, ORDERED that Christopher Tortu is a person whose qualification must be established in connection with the application of Gourmet Bouquets, Inc., for a casino service industry license;

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8084-88
AGENCY DKT. NO. 89-CSI-6

GOURMET BOUQUETS, INC.,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Wayne R. Rosenlicht, Esq., for petitioner (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Mitchell A. Schwefel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 13, 1989 Decided: October 12, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Gourmet Bouquets, Inc. (petitioner), to the Casino Control Commission for licensure as a casino service industry, pursuant to section 92c of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*). By letter report to the Commission dated September 12, 1988, the Division of Gaming Enforcement (Division) objected to licensure of the petitioner, alleging that it and its qualifiers under *N.J.A.C.* 19:43-1.14(a)2 had not established their qualifications for licensure and had engaged in conduct which would disqualify them from licensure, pursuant to sections 86 and 92 of the Casino Control Act and *N.J.A.C.* 19:43-1.1 *et seq.* These are the issues to be resolved:

New Jersey Is An Equal Opportunity Employer

1. Has petitioner Gourmet Bouquets, Inc., established by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure, pursuant to section 92c of the Casino Control Act and *N.J.A.C.* 19:43-1.3(c).

2. Has each of the petitioner's individual qualifiers established by clear and convincing evidence his or her good character, honesty and integrity, as required by section 92c of the act and *N.J.A.C.* 19:43-1.3(c) and *N.J.A.C.* 19:43-1.14(a)2.

3. With reference to the alleged 1982 conviction of petitioner's qualifier Christopher Tortu on charges of conspiracy to possess and distribute controlled dangerous substances and to maintain premises for distribution of controlled dangerous substances, contrary to *N.J.S.A.* 24:21-24(a) and *N.J.S.A.* 2C:5-2, has Christopher Tortu been convicted of an offense which would be a disqualifier from licensure pursuant to section 86c(1) of the act.

4. Have petitioner's qualifiers Christopher, Irene and Armando Tortu failed to reveal material facts and supply untrue or misleading information pertaining to the qualification criteria, and if so, are they disqualified pursuant to section 86b of the act.

5. Have petitioner's qualifiers committed the offense of falsifying records, contrary to *N.J.S.A.* 2C:21-4, which would be a disqualifier pursuant to section 86c(1) of the act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

6. Should petitioner be disqualified from licensure as a casino service industry, if any of its individual qualifiers is disqualified, pursuant to sections 92c and d of the act and *N.J.A.C.* 19:43-1.5.

PROCEDURAL HISTORY

By letter filed with the Casino Control Commission on October 27, 1988, the petitioner requested a hearing concerning its application for a casino service industry license. On November 4, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to

N.J.S.A. 52:14F-1 *et seq.* A telephone prehearing conference was held on January 31, 1989.

The hearing in this matter was held as scheduled on May 23, 1989, at the Office of Administrative Law in Atlantic City, New Jersey. The record remained open following the hearing in order to permit the parties to submit written closing arguments. The last of these papers was received on July 13, 1989, and the record closed on that date. Issuance of this initial decision was delayed because of illness.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner is in the business of designing and installing decorative floral displays. The major source of income for the petitioner has been its business with the Sands Casino Hotel. The petitioner has also done business with several other licensed casinos in Atlantic City. On September 9, 1986, the Sands Casino filed a vendor registration form with the Casino Control Commission on behalf of the petitioner (Exhibit R-2). The information in the form was supplied by Christopher Tortu, and he was identified as a 100 percent owner and sole proprietor of the business.

Christopher Tortu is a 39-year-old resident of Brigantine, New Jersey. He describes himself as a designer. According to Christopher Tortu, he was listed as the sole proprietor of the business because he was then actively involved in running the company. He solicited business, entered into contracts, and signed checks.

At the time the vendor registration form was filed in September 1986, Christopher Tortu believed that his appeal from a 1982 criminal conviction was still pending. On March 20, 1981, Christopher Tortu had been indicted by the State Grand Jury on one count of conspiracy to possess and distribute controlled dangerous substances and to maintain premises for distribution of controlled dangerous substances, contrary to *N.J.S.A.* 24:21-24(a) and *N.J.S.A.* 2C:5-2; and one count of maintaining premises for distribution of controlled dangerous substances, contrary to *N.J.S.A.* 24:21-21(a)(6) and (b), and *N.J.S.A.* 2C:2-6 (Exhibit R-1).

On June 4, 1982, Christopher Tortu retracted a plea of not guilty and entered a plea of guilty to the first of the two counts described above. On August 25, 1982, he was sentenced to a New Jersey State Prison term of five years on count I of the indictment and count II of the indictment was dismissed. However, execution of the

sentence was stayed by the Honorable Mary Ellen Talbott, J.S.C. In her statement of sentencing reasons (Exhibit R-1), Judge Talbott noted:

> . . . The Court has received and carefully reviewed defendant's Pre-Sentence Report and finds it very favorable. The Court is also impressed with the many letters written on the defendant's behalf and acknowledges the additional biographical information Mr. Tortu's attorney has supplied. The defendant had a bright future but got on the wrong track with drugs. The Court considers the aggravating circumstances, the nature of the offense and the need to deter him and others from violating the law. The Court considers the mitigating circumstances to be the defendant's background and character. The Court is aware that the probation department recommended a probationary period because the defendant is a person suitable for rehabilitation. However, the Court believes the defendant must pay a penalty for being involved in this offense and sentences the defendant for purposes of deterrence and punishment.

As mentioned above, Christopher Tortu appealed his conviction. However, his attorney on appeal left private practice to join the Prosecutor's office and Mr. Tortu was unable to learn the status of his appeal through the law firm. Each time he contacted the County Clerk's office, he was told that the appeal was still pending. Unknown to Mr. Tortu, the Appellate Division of the Superior Court affirmed his judgment of conviction in February 1984, and he consequently did not surrender himself to serve his sentence.

On January 4, 1988, Judge Talbott issued a warrant for his arrest (Exhibit R-1). Christopher Tortu was arrested the next day at the business location of the petitioner. He was incarcerated on January 8, 1988. However, by letter to the Intensive Supervision Program dated February 24, 1988, Judge Talbott recommended that Christopher Tortu be admitted into the Intensive Supervision Program (Exhibit P-2). She noted that during the time Mr. Tortu mistakenly believed that his appeal was still pending, he had established a successful florist business in Atlantic City and had not been in any further trouble with the criminal justice system. On March 11, 1988, Christopher Tortu was released into the Intensive Supervision Program (ISP) for a minimum of 16 months.

ISP Officer James D. Salvaryn has supervised Christopher Tortu since his release into the program. He testified that Mr. Tortu has complied with every requirement. These include maintaining a curfew, keeping a diary, maintaining a budget, performing 16 hours of community service each month, attending treatment meetings, submitting to random urine monitoring, and maintaining gainful

employment (see Mr. Salvaryn's letter dated October 3, 1988, admitted into evidence as Exhibit P-3). According to Mr. Salvaryn, Christopher Tortu has been an exemplary participant in the program. In addition to being a pleasure to work with, Mr. Tortu has even provided rides for other participants in the program.

Mr. Salvaryn testified that Christopher Tortu has been given five to six random urine tests per month since March 1988. In all that time, there has been only one positive test result, and that resulted from Mr. Tortu's use of a prescription drug for a headache. In Mr. Salvaryn's opinion, there is no evidence whatsoever of any involvement by Mr. Tortu with any illegal drugs. He supported this opinion by adding that 90 percent of his visits are unannounced. He believes that Christopher Tortu is an impressive participant in the program; a participant who is even helping others rather than simply doing just enough to stay out of prison.

Mr. Salvaryn testified that he has visited Christopher Tortu at work at least once per week. He described Mr. Tortu as the creative force of the business, designing floral arrangements. Mr. Salvaryn has observed that Christopher Tortu's sister Donna is often at the business, and their father, Armando Tortu, has been at the business one-quarter to one-third of the times when Mr. Salvaryn has stopped in. Mr. Salvaryn has also observed Christopher Tortu setting up his decorative displays in casinos. At times, Armando Tortu has been with him.

Robert Van Sciver, Director of Construction at the Sands Casino Hotel, testified concerning how the petitioner has done business with the Sands. During the summer of 1987, the petitioner provided floral displays for the Sands's facility, including a display in the lobby. Although the Sands required that such displays be certified for flameproofing (Exhibit P-1), one of the petitioner's displays went up in flames when a patron lit a cigar. The petitioner's supplier had certified that the materials were fire retardant, but the materials obviously did not comply with the certification. In any event, Mr. Van Sciver testified that Christopher and Armando Tortu were very apologetic about the situation and they quickly did everything that was necessary to make good on the problem. Consequently, the Sands did not need to pursue any claim against the supplier.

Nicholas Casiello, Jr., an attorney at law of the State of New Jersey, testified on behalf of the petitioner. Mr. Casiello, who specializes in casino law, described the legal counsel which he provided to the Tortu family. After a telephone conversation with Christopher Tortu on July 28, 1987, Mr. Casiello met with him on August 3,

1987. At that time, Christopher Tortu explained to Mr. Casiello that he had been convicted of a crime in 1982 but did not know the outcome of his appeal, even though he had tried to obtain information from his former attorney and from the court clerk. According to Mr. Casiello, Christopher Tortu was seeking representation in regard to the petitioner's casino service industry license application. Mr. Casiello suggested that Mr. Tortu should consider incorporation of the business for personal liability purposes and other standard business reasons, and Mr. Tortu agreed.

It was the testimony of Mr. Casiello that he then in early August 1987 began the steps necessary to establish the corporation, even though he did not yet know for certain who the corporation officers would be, because the business faced a Casino Control Commission deadline for filing its application for a casino service industry license. At Mr. Casiello's direction, Christopher and Irene Tortu were named as directors on the Certificate of Incorporation, which was filed with the New Jersey Secretary of State on September 8, 1987 (Exhibit R-3). Christopher Tortu was also named as the registered agent of the new corporation. However, Mr. Casiello then met with all three of the Tortu's on August 25, 1987. Because of Christopher Tortu's 1982 conviction, Mr. Casiello advised the family that Christopher would have to change his role in the company so that he would not be involved in the business in a manner which would require him to be a qualifier for licensing purposes. Mr. Casiello emphasized that the Tortu's made it clear to him that they did not want to do anything improper or illegal in terms of filing their casino service industry license application or otherwise. Thus, Mr. Casiello advised them that Christopher Tortu would, in fact, have to change his role in the company. So, all three of the Tortus concluded that the owners, officers, and directors of the new corporation would thereafter be Irene and Armando Tortu and these changes were set forth in the corporate by-laws adopted on September 8, 1987 (Exhibit R-3).

The petitioner's business entity disclosure form no. 3 was filed with the Casino Control Commission on October 16, 1987 (Exhibit R-4). In accordance with the advice of counsel, the disclosure form did not list Christopher Tortu as a qualifier of the business. Mr. Casiello testified that he was thereafter contacted by Division Agent Joseph Janco. They had several conversations, and they met in person on February 16, 1988. According to Mr. Casiello, Agent Janco wanted to know if Christopher Tortu was still involved in the petitioner's business. Mr. Casiello told him that Christopher Tortu was still involved in the company; he was working as an employee. Agent Janco expressed the opinion that Christopher Tortu could continue to work as an employee for the company as long as he was not in a qualifier position,

meaning not an officer, director or shareholder. Based upon this information and upon his independent knowledge and review of the law, Mr. Casiello continued to advise the Tortus that Christopher could remain involved with the petitioner as an employee so long as he was not involved in a qualifier position.

Notwithstanding all of the above, it was Mr. Casiello's testimony that Christopher Tortu ultimately did file as a qualifier. He explained that this came about when the Division of Gaming Enforcement wrote to him asking for an opportunity to take the sworn statements of Irene and Armando Tortu. A date was set for taking these statements, but Mr. Casiello inquired of the Division as to the purpose for the interviews and learned that they were intended to investigate whether Christopher Tortu was a qualifier. Mr. Casiello was concerned about the cost to his clients to have legal representation before and during those interviews, so he inquired as to whether the sworn statements would be necessary if Christopher Tortu filed as a qualifier. The Division agreed not to take the sworn statements if he filed, and on August 8, 1988, Christopher Tortu filed his disclosure form.

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

The factual dispute in this matter concerns the actual role of Christopher Tortu in the operation of petitioner's business. Irene Tortu testified that she is the president of the petitioner and owns 51 percent of the business. Her husband Armando owns the remaining 49 percent. Although she is a full-time employee of the Urban Affairs Partnership, Irene Tortu involves herself in the day-to-day business of the petitioner in regard to policy and finances.

According to Irene Tortu, she and Armando Tortu have the power to bind the company contractually and to sign checks. Their son Christopher is not authorized to perform either of these functions for the business. If there are any policy disagreements concerning operation of the business, Irene Tortu has the final word. She stated that she is in daily contact with her husband and son, usually on the telephone. She will make the policy decisions concerning the business to seek and the ability to honor contracts.

Irene Tortu noted in her testimony that the business was started in the mid-1980's. She stated that it was a devastating time for her son Christopher because of his earlier conviction. Because of this, Irene Tortu decided that Christopher Tortu

should be set up in a business as a "sole proprietor" and her husband went along with her decision. According to Irene Tortu, she and Armando Tortu stayed involved with the business from the beginning. However, Christopher Tortu handled all phases of the business, including signing contracts and company checks. This was the situation at the time the vendor registration was filed in September 1986 (Exhibit R-2).

Irene Tortu testified that the fire in petitioner's decorative display at the Sands Casino Hotel helped convince the Tortus to incorporate the petitioner. When this was discussed with Mr. Casiello in August 1987, they also talked about Christopher Tortu's role in the business. According to Irene Tortu, she told Mr. Casiello that they wanted to be truthful and honest and that they would be guided by his advice. The Tortus learned that Christopher's role in the business had to change; he had to return to being a designer. He would no longer be able to solicit sales for the business. This function would be assumed by Armando Tortu, and Armando and Irene would thereafter sign the company checks. Irene Tortu testified that Christopher Tortu no longer signed checks once the corporate checks had arrived.

It was the testimony of Irene Tortu that Christopher receives a salary from the business and there is no corporate profit once the bills are paid. She stated that Christopher Tortu is grateful for the opportunity which she has given him. Noting that he has turned his life around and is dedicated to his family and job, Irene Tortu testified sincerely that she is committed to the business. Significantly, it was her testimony that the business continued to operate while Christopher was in jail. During that time, Armando and a subcontractor took care of Christopher's duties.

As noted above, Christopher Tortu was actively involved in running the business at the time the vendor registration form was filed in September 1986, which listed him as the sole proprietor. Christopher Tortu testified that he solicited business, entered contracts, and signed checks. When he was notified by the Casino Control Commission that he would have to apply for a casino service industry license due to the volume of business, he contacted Mr. Casiello for legal advice. According to Christopher Tortu, he and his parents discussed his criminal conviction and appeal with Mr. Casiello and Mr. Casiello expressed concern about Christopher Tortu's involvement in the business because of the conviction. He and his parents also discussed with Mr. Casiello who would be officers and directors if the business was incorporated. The possibility of personal liability was the primary motivation for the Tortus' decision to incorporate.

Christopher Tortu testified that he had not intended to be a director of the new corporation and Mr. Casiello quickly acted to correct that information which was contained in the certificate of incorporation (Exhibit R-3). It was the sincere and credible testimony of Christopher Tortu that he never had an ownership interest in the business and he was not going to be a principal. Thus, there was no intention to hide his role in the business from the Casino Control Commission. He explained that his mother is responsible for the business and she has the final word. Irene Tortu told Christopher that he could work, design, have a job, but he could no longer solicit sales, or sign corporate checks, or sign contracts to bind the company. It was Christopher Tortu's sincere testimony that he has absolutely complied with Mr. Casiello's advice about what he could or could not do in the business.

Christopher Tortu testified that his father has been involved with him in the business from the beginning. However, Armando Tortu assumed a more active role upon incorporation. Christopher acknowledged that he was an important employee before incorporation and remained so afterward. However, he repeated that his role had changed. He noted that it was not necessary for him to solicit business from the casinos because they contacted the petitioner since its work was desirable. He acknowledged that he still went to the casinos to do the work.

Christopher Tortu also acknowledged that he did subsequently file as a qualifier. This was done at the request of the Division, and after Mr. Tortu had received the advice of his legal counsel, Mr. Casiello. Mr. Tortu is willing to assume a full role, a limited role, or no role at all with the petitioner, depending on the outcome of this case.

Irene Tortu and her son Christopher both testified in a sincere and believable manner. Christopher Tortu was particularly candid concerning his role in the business and the opportunity which his parents have given him to head his life in the right direction. Simply stated, I believe him. From very different perspectives, Christopher Tortu and his mother have convincingly testified that Christopher's role in the business changed at the time of incorporation in September 1987, and that the omission of Christopher Tortu from the business entity disclosure form which the petitioner filed with the Casino Control Commission accurately reflected Christopher's changed role. I so FIND.

CONCLUSIONS OF LAW

Petitioner Gourmet Bouquets is an applicant for a non-gaming casino service industry license. Pursuant to section 92 of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*), such entities must be licensed in accordance with the rules of the Casino Control Commission. Under *N.J.A.C.* 19:43-1.3(c), each applicant for such a license must establish by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure. Those whose qualifications must be established as a prerequisite to the licensure of the enterprise pursuant to section 92c of the act are identified in *N.J.A.C.* 19:43-1.14(a)2. These include the enterprise and each owner holding a beneficial interest in excess of five percent, as well as each director of the enterprise and each officer significantly involved in the conduct of business with a casino licensee.

Pursuant to section 92d of the act, a non-gaming casino service industry license may be denied to any applicant disqualified in accordance with the criteria set forth in section 86 of the act. Section 86b of the act provides for disqualification of an applicant for failure to reveal material facts or for the supplying of untrue or misleading information pertaining to the qualification criteria. Section 86c(1) provides for disqualification of an applicant on the basis of his conviction of certain enumerated offenses. Among these are distributing a controlled dangerous substance, contrary to *N.J.S.A.* 2C:35-5 and conspiracy to commit this offense, contrary to *N.J.S.A.* 2C:5-2.

It is undisputed that Christopher Tortu was convicted in 1982 of conspiracy to possess and distribute controlled dangerous substances and to maintain premises for distribution of controlled dangerous substances, contrary to *N.J.S.A.* 24:21-24(a) and *N.J.S.A.* 2C:5-2. This conviction is for an offense which is equivalent to *N.J.S.A.* 2C:5-2 and *N.J.S.A.* 2C:35-5, enumerated disqualifiers under *N.J.S.A.* 5:12-86c(1). However, the Casino Control Commission has held that the use of the word "may" in *N.J.S.A.* 5:12-92d vests discretionary authority in the Commission to determine whether to grant or deny an application for a non-gaming casino service industry license where such section 86c(1) disqualification is evident. *In the Matter of the Application of Edward Bershad Co. t/a Penn Vending Co.*, Dkt. No. 88-CSI-14, (Commission Decision at Public Meeting of February 1, 1989). As a guide to the sound exercise of its discretion, the Commission determined that reference should be made to the eight factors listed in the rehabilitation provisions of the Casino Control Act, *N.J.S.A.* 5:12-90h and 91d, with but slight modification to account for the fact that the applicant is

an enterprise providing goods or services to a casino licensee. The eight criteria concern: (1) the nature of the enterprise's relationship with the casino industry; (2) the nature and seriousness of the offense or conduct; (3) the circumstances surrounding it; (4) the date it occurred; (5) the age of the persons responsible; (6) whether the offense was an isolated or repeated one; (7) any social conditions which may have contributed to the offense or conduct; and (8) any evidence of rehabilitation.

As discussed above, I found as fact that the omission of Christopher Tortu from the petitioner's business entity disclosure form filed with the Commission accurately reflected his reduced role with the petitioner at the time of the filing. He has subsequently filed as a qualifier. Thus, it is necessary to apply the foregoing rehabilitation factors and determine whether Christopher Tortu's 1982 conviction of an offense enumerated as a disqualifier under section 86c(1) of the act should disqualify Christopher Tortu and disqualify the petitioner from obtaining a non-gaming casino service industry license. Christopher Tortu designs floral decorations for display in casinos. Solicitation of business and entry into contracts are handled by his father, Armando Tortu. Since the filing of the business entity disclosure form, Christopher Tortu has not handled these responsibilities, nor has he signed checks for the business.

There is no doubt that Christopher Tortu was convicted of a serious offense, involving a conspiracy to distribute controlled dangerous substances. According to the indictment, the criminal activity occurred nearly ten years ago, when Mr. Tortu was 29 years old. As such, it is doubtful that immaturity was a factor, and no social conditions which may have contributed to the offense have been identified, except for the admission of Mr. Tortu that he was a heavy cocaine user in 1979. This is Mr. Tortu's only conviction, and he has had no other criminal involvement since his indictment.

Christopher Tortu appealed his conviction. Despite his efforts to ascertain the status of the appeal, he did not learn that the appeal was dismissed by the Appellate Division of the Superior Court in 1984, until his arrest on a warrant issued by the sentencing judge in January 1988. His five-year prison sentence had not been served. However, Mr. Tortu was released into the Intensive Supervision Program and it is undisputed that he has participated in the program in an exemplary manner. Remembering the Mr. Tortu has maintained stable employment and is a responsible member of the community, I **CONCLUDE** from all of the foregoing factors that

Christopher Tortu is rehabilitated. Pursuant to the discretionary authority granted under *N.J.S.A.* 5:12-92d, I thus further **CONCLUDE** that the petitioner is not disqualified from licensure based upon Christopher Tortu's conviction of an offense which would be the equivalent of an enumerated disqualifier under section 86c(1) of the Casino Control Act.

Having found as fact that the filings initiated on petitioner's behalf by Christopher, Irene and Armando Tortu accurately reflected the role of Christopher Tortu at the time the filings were made, I further **CONCLUDE** that the petitioner's qualifiers have not failed to reveal material facts and have not supplied untrue or misleading information pertaining to the qualification criteria, and thus, the qualifiers are not disqualified pursuant to section 86b of the act. Furthermore, I **CONCLUDE** that the petitioner's qualifiers have not committed the offense of falsifying records, contrary to *N.J.S.A.* 2C:21-4, which would be a disqualifier pursuant to section 86c(1) of the act.

Based upon the findings of undisputed and disputed fact in this matter, I **CONCLUDE** that each of the petitioner's individual qualifiers has established by clear and convincing evidence his or her good character, honesty and integrity, as required by section 92c of the act and *N.J.A.C.* 19:43-1.3(c) and *N.J.A.C.* 19:43-1.14(a)2. Therefore, I **CONCLUDE** that petitioner has established by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure, pursuant to section 92c of the act and *N.J.A.C.* 19:43-1.3(c).

ORDER OF DISPOSITION

Accordingly, the application of Gourmet Bouquets, Inc., for licensure as a casino service industry pursuant to *N.J.S.A.* 5:12-92c is **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the 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.

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I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

10/12/89
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ by JRT

Receipt Acknowledged:

10/12/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 18 1989
Date

Jayne LaVecchia M.S.
OFFICE OF ADMINISTRATIVE LAW

jz

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Certificate of Flameproofing

P-2 Letter from Judge Talbott to the Intensive Supervision Program dated February 24, 1988

P-3 Letter of ISP Officer James D. Salvaryn dated October 3, 1988

For the respondent:

R-1 Indictment with Judgment of Conviction and sentencing statement

R-2 Vendor Registration Form filed September 9, 1986

R-3 Certificate of Incorporation filed September 8, 1987, with corporate by-laws

R-4 Business Entity Disclosure Form filed October 16, 1987

R-5 Not in evidence

WITNESSES

For the petitioner:

Nicholas Casiello, Jr., Esq.
Robert Van Sciver
James Salvaryn
Irene Tortu
Joseph Janco
Christopher Tortu

For the respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-20
REGISTRATION NO. 71486-40
OAL DOCKET NO. CCC 8766-88
ORDER NO. 89-29-15

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

Complainant,

v.

ANTHONY R. GREEN,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 19, 1989,

IT IS on this 28th day of August 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 10/4/89
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

45 = 7/31

INITIAL DECISION
OAL DKT. NO. CCC 8766-88
AGENCY DKT. NO. 89-20

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ANTHONY R. GREEN,
Respondent.

FILED
JUN 14 1989
CASINO CONTROL COMMISSION
LEGAL DIVISION

Norma L. Stancil, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Anthony R. Green, respondent, pro se

Record Closed: April 27, 1989 Decided: June 12, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on June 14, 1988, seeking revocation of the respondent's casino hotel employee registration, based upon the allegation that the respondent has been convicted of offenses listed as disqualifiers under the Casino Control Act (N.J.S.A. 5:12-1 et seq.). A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on March 13, 1989. At that time, the following issues to be resolved at the hearing were identified:

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1. Whether respondent was convicted of crimes listed as statutory disqualifiers in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:20-7, receiving stolen property and N.J.S.A. 24:21-19(a)1, which is analogous to N.J.S.A. 2C:35-5, possession of a controlled dangerous substance with intent to distribute.

2. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

At the commencement of the hearing in this matter on April 27, 1989, the Division of Gaming Enforcement requested amendment of the prehearing order to include an additional issue. Specifically, the Division requested that the hearing include a determination as to whether the respondent is subject to revocation of his registration pursuant to section 86b of the Casino Control Act based upon the allegation that he has failed to disclose facts material to his qualifications. According to the Division, it was an oversight that the issue had not been raised previously. Respondent stated that he was prepared to deal with the additional issue and had no objection to its inclusion. Thus, this matter also includes the following additional issue:

3. Is the respondent disqualified from registration based upon his failure to disclose facts material to his qualifications, pursuant to section 86b of the Act.

PROCEDURAL HISTORY

The Division's complaint was filed with the Casino Control Commission on June 14, 1988. The respondent failed to timely file a notice of defense and the Commission on October 20, 1988, ordered that the casino hotel employee registration of the respondent be revoked based upon his constructive admission of all of the matters and facts contained in the complaint, pursuant to N.J.S.A. 5:12-108(d). The respondent filed a petition for rehearing pursuant to N.J.S.A. 5:12-107(d), and on November 28, 1988, the Commission ordered that the petition be granted and its order of revocation be vacated.

On December 2, 1988, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. As noted above, Administrative Law Judge Thompson conducted a

prehearing conference on March 13, 1989. The matter was thereafter assigned to me for hearing on April 27, 1989. The hearing was held as scheduled in Atlantic City, New Jersey, and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The respondent is a 25-year-old life-long resident of Atlantic City, New Jersey. He completed approximately the eleventh grade in high school. The respondent has been employed as a kitchen utility steward at Trump Plaza Hotel and Casino since December 11, 1986.

While employed at Trump Plaza, the respondent has received a number of notices of unsatisfactory performance and discipline for misconduct. In September 1987, the respondent received a written warning for an attendance problem (Exhibit P-20). In November 1987, the respondent received a written warning for creating a disturbance (Exhibit P-19). He received another written warning in December 1987 for poor performance (Exhibit P-21). A written warning was issued to the respondent in May 1988 for insubordination (Exhibit P-22). In June 1988, the respondent received a written warning for insubordination and in February 1989, the respondent was suspended for three days for arguing with a fellow employee.

The respondent's arrest and conviction record is undisputed. In May 1983, the respondent was arrested for unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5 (Exhibits P-1 and P-2). This complaint was subsequently remanded to the Atlantic City Municipal Court as a disorderly conduct charge, contrary to N.J.S.A. 2C:33-2 (Exhibit P-3). On September 15, 1983, the respondent was arrested for possession of marijuana under 25 grams (Exhibits P-4 and P-5). It was the respondent's recollection that he was found guilty on this offense and was ordered to pay a small fine.

The respondent had two arrests on April 13, 1985. One was for possession of cocaine and possession of cocaine with intent to distribute, contrary to N.J.S.A. 24:21-20(a)1 and N.J.S.A. 24:21-19(a)1. According to the Atlantic City police investigation report (Exhibit P-6), the respondent was found in possession of 20 glassine packets containing white powder. The respondent was subsequently indicted on these charges by the Atlantic County Grand Jury (Exhibit P-8).

The respondent's other arrest on April 13, 1985, was on charges of unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5 and theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7 (Exhibits P-10 and P-11). While the police were executing a warrant where the respondent resided, a handgun was observed. The police checked the serial numbers and determined that the weapon had been stolen. According to the respondent, he had purchased the handgun in Atlantic City from some men in a car. The respondent was indicted on these charges by the Atlantic County Grand Jury (Exhibit P-13).

On June 28, 1985, the respondent entered a plea of guilty to the indictments (Exhibits P-9 and P-14). On July 12, 1985, the respondent was sentenced. The weapon possession count was dismissed and on the charge of theft by receiving stolen property the respondent was sentenced to serve 77 days in the Atlantic County Jail, with credit for 77 days already served. He was placed on probation for a period of 18 months and ordered to pay a fine of $300. The two controlled dangerous substance counts of the other indictment were merged and for his conviction for possession of a controlled dangerous substance with intent to distribute, the respondent was also sentenced to 77 days incarceration and probation for 18 months, to run concurrently with the other indictment. For both convictions, the respondent was ordered to pay $25 to the Violent Crimes Compensation Board.

The respondent testified that he satisfactorily reported to his probation officer on a monthly basis. However, he failed to completely pay the ordered fine. Because of this failure, a warrant for the respondent's arrest was issued in September 1987. The respondent was arrested on the warrant on April 3, 1989 (Exhibits P-15 and P-16). According to the respondent, he paid the balance remaining on his fine from the 1985 convictions and he was released.

The respondent filed a Personal History Disclosure Form 4A with the Casino Control Commission in December 1986 (Exhibit P-17). In large letters at the top of page 4 is a notice to the applicant for registration: "Important - failure to answer any question on this form completely and truthfully will result in the revocation of your registration." On page 8, the form requires disclosure of an applicant's arrest or charge, even if not convicted, of any felony, crime, misdemeanor, disorderly person's offense, juvenile offense or other offense other than a traffic violation. In response to this question, the respondent disclosed his 1985 conviction for receiving stolen property. No other arrests were disclosed, and his arrest on the same day and

conviction on the same subsequent day for possession of a controlled dangerous substance with intent to distribute was not disclosed.

On November 20, 1986, the respondent filled out an application for employment at Trump's Hotel Casino (Exhibit P-18). On the first page of this application the respondent was asked if he had ever been convicted of a crime other than a traffic violation. In response to this question, the respondent provided the answer, "No." As noted previously, the respondent was hired by the Trump Plaza.

Division of Gaming Enforcement Agent John Lugo testified at the hearing that he conducted a background investigation concerning the respondent's casino hotel employee registration. The investigation revealed the respondent's arrests and convictions and Agent Lugo determined that the respondent had not disclosed his 1983 arrest for possession of a weapon and possession of marijuana and his 1986 conviction for possession of a controlled dangerous substance with intent to distribute.

As part of his investigation, Agent Lugo contacted the respondent by telephone in January 1988. He read the Personal History Disclosure Form question to the respondent which seeks disclosure of the applicant's arrest and conviction history and asked the respondent if he understood the question. According to Agent Lugo, the respondent stated that he did understand. When Agent Lugo asked the respondent why he had not disclosed all of his arrests, he could not understand the respondent's answer. As Agent Lugo testified, the answer, "was not very coherent at that point."

It was the testimony of Agent Lugo that he again read the disclosure form question to the respondent and asked the respondent if he understood. When the respondent replied that he did understand, the agent again asked him why he had not disclosed all of his arrests. Agent Lugo testified at the hearing that the respondent answered that, "the court gave him a disposition and that once I got everything straightened out, I was to get back in touch with him." The agent testified that the respondent did not give any indication to him that he had possibly forgotten his arrest record.

Testifying at the hearing, the respondent acknowledged that he had disclosed only his conviction for receiving stolen property. The respondent at first stated that he did not put down all the arrests because they were misdemeanors. He further

explained that he thought he only had to put down his convictions and he did not put down the drug charge because he had forgotten it. The respondent explained that he must have forgotten to disclose his conviction for possession of CDS with intent to distribute because he was so busy trying to get a job. When the respondent was asked if he thought he would not have received a registration if he had disclosed his entire arrest record, he replied:

> I don't know. Maybe that's what I was thinking. I was trying to get a job at the time. There wasn't nowhere else. Seems like if you got a job in this town -- because I've been living here all my life. Maybe that's what I was thinking. I don't know.

The respondent acknowledged that he did not disclose any of his arrest record in his application for employment with the Trump Plaza (Exhibit P-18). He was asked if he had failed to disclose his arrest record because of his need for a job. The respondent replied, "I guess that is what was on my mind, going to work." He acknowledged that he has had some minor problems while employed at the Trump Plaza. However, he stated that he has always been a good worker and that is why he is still there.

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

CONCLUSIONS OF LAW

Participation in casino operations as a licensee or registrant under the Casino Control Act (N.J.S.A. 5:12-1 et seq.) is deemed to be a revokable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the Act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the Act.

Section 86b provides for disqualification for failure to provide information, documentation and assurances required by the Act or requested by the Commission, or for failure 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. In this matter, it is undisputed that the respondent failed to

disclose all but one of his arrests on his Personal History Disclosure Form. He did disclose his conviction for theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7. However, on the same day that he was arrested for that offense, the respondent was also arrested on a charge of possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19(a)1, and analogous to N.J.S.A. 2C:35-5. On the same day that he was convicted on the theft by receiving stolen property charge, the respondent was also convicted on the charge of possession of CDS with intent to distribute. In addition to failing to disclose this conviction on his Personal History Disclosure Form, the respondent subsequently failed to disclose this or any other arrest and conviction on his application for employment at the Trump Plaza Casino Hotel.

There should be little doubt that the respondent's arrest and conviction record is a material fact which would be important to evaluation of his qualifications. This is particularly clear because the Commission expressly requires disclosure of this information. However, not every failure to provide material information should be deemed a disqualifying event. It should be determined whether the failure was willful or evinced a conscious disregard for the regulatory system. A merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant disqualification. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Dkt. No. 79-CL-1 (1979). In this matter, the respondent's explanations for failure to make full disclosure on his Personal History Disclosure Form were evasive and ambiguous. However, much can be learned from his subsequent failure to disclose any arrests or convictions on his application for employment at Trump Plaza. This is significant evidence showing that the respondent's desire to obtain employment in the licensed casino industry was the primary motivation for failure to make full disclosure of his arrest and conviction record. Based upon the foregoing, I CONCLUDE that the respondent's failure to make full disclosure was not merely inadvertent or ignorant, but rather, it evinced a conscious disregard for the regulatory system. Therefore, I CONCLUDE that the respondent has failed to disclose material facts and is thus disqualified from continued registration, pursuant to sections 86b and 91b of the Act.

Pursuant to section 91b, the Commission may also revoke the registration of any registrant who is disqualified on the basis of his conviction of any offense which is specifically listed under section 86c of the Act. It is undisputed that the respondent has been convicted of receiving stolen property in the third degree, contrary to N.J.S.A. 2C:20-7, and possession of CDS with intent to distribute, an offense

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analogous to N.J.S.A. 2C:35-5. Both of these offenses are specifically listed under section 86c(1) of the Act as disqualifiers. Therefore, I **CONCLUDE** that the respondent is subject to revocation of his casino hotel employee registration on the basis of these convictions of disqualifying offenses.

Section 91d of the Act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his convictions of offenses identified in the Act as disqualifiers, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-91d shall be considered:

(1) the nature and duties of the registrant's position;

(2) the nature and seriousness of the offense or conduct;

(3) the circumstances under which the offense or conduct occurred;

(4) the date of the offense or conduct;

(5) the age of the registrant when the offense or conduct was committed;

(6) whether the offense or conduct was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense or conduct;

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

The respondent is now 25 years old. His convictions in 1986 resulted from criminal conduct which occurred in April 1985, when the respondent was 21 years old. The respondent was involved in some drug usage prior to these convictions.

The respondent's conduct involved serious criminal matters. He possessed cocaine and was convicted of possession with intent to distribute. In addition, the stolen property which he received was a handgun. The respondent spent 77 days in jail and he was placed on probation for 18 months. Although he reported to his

probation officer, the respondent did not fully pay the fine imposed during the probationary period.

Because the respondent failed to pay his entire fine, a warrant for his arrest was issued. This warrant was executed in April 1989, not long before the hearing in this matter. Upon satisfaction of the remaining balance of the fine, the respondent was released.

The respondent has been employed by the Trump Plaza Casino Hotel since December 1986. During that time, he has been involved in several incidents which resulted in written warnings from his employer and he has also received a three-day suspension for misconduct. In addition to these problems, the respondent failed to disclose on his application for employment with the Trump Plaza that he had an arrest and conviction record. As noted previously, the respondent also did not fully disclose his arrest and conviction record in his Personal History Disclosure Form filed with the Casino Control Commission.

The respondent's failure on two documents to fully disclose his arrest and conviction record constitutes significant evidence that he has not achieved rehabilitation following his disqualifying convictions. In light of the conclusion that the respondent is disqualified from licensure pursuant to section 86b of the Act as a result of his failure to disclose material facts, I must further **CONCLUDE** that the respondent has failed to establish his rehabilitation by clear and convincing evidence, within the meaning of section 91d of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Anthony R. Green be **REVOKED.**

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

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

June 12, 1989
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

6/13/89
DATE

Kimberly Wacks
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ml

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INVENTORY OF EXHIBITS

For the petitioner:

P-1	Atlantic City Police Department Investigation Report, dated May 29, 1983
P-2	Atlantic City Police Department Arrest Report, dated May 29, 1983
P-3	Atlantic City Municipal Court Complaint, dated May 29, 1983
P-4	Atlantic City Police Department Investigation Report, dated September 25, 1983
P-5	Atlantic City Police Department Arrest Report, dated September 15, 1983
P-6	Atlantic City Police Department Investigation Report, dated April 13, 1985
P-7	Atlantic City Police Department Arrest Report, dated April 13, 1985
P-8	Atlantic County Indictment, dated May 7, 1985
P-9	Atlantic County Superior Court conviction and judgment, dated July 12, 1985
P-10	Atlantic City Police Department Investigation Report, dated April 13, 1985
P-11	Atlantic City Police Department Arrest Report, dated April 13, 1985
P-12	Atlantic City Police Department Property Report, dated April 13, 1985
P-13	Atlantic County Indictment, dated May 9, 1985
P-14	Atlantic County Superior Court conviction and judgment, dated July 12, 1985
P-15	New Jersey State Police Report, dated April 3, 1989
P-16	New Jersey State Police Arrest Report, dated April 3, 1989
P-17	Personal History Disclosure Form. dated December 1986
P-18	Application for employment, dated November 1986
P-19 to P-24	Trump Plaza Notices of Misconduct

For the respondent:

None

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WITNESSES

For the petitioner:

John Lugo
Anthony R. Green

For the respondent:

Anthony R. Green

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-246
LICENSE NO. 02414-11
OAL DOCKET NO. CCC 114-89
ORDER NO. 89-47-18

APPLICATION FOR RENEWAL OF THE CASINO KEY EMPLOYEE LICENSE OF ALAN M. HADE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 7th day of December 1989, ORDERED that the initial decision is modified as follows:

> to eliminate the ALJ's conclusion that the applicant established his good character, honesty and integrity which was not an issue before the ALJ and to find instead that the applicant established the financial stability, integrity and responsibility required for casino key employees by N.J.S.A. 5:12-89(b)(1). The initial decision adequately addresses this issue, but incorrectly characterized it as good character, honesty and integrity on page 8 of the decision.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 114-89
AGENCY DKT. NO. 89-EA-246

ALAN M. HADE,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

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

Nancy P. Scharff, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: August 25, 1989 **Decided:** October 10, 1989

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the November 15, 1988 letter, filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) concerning the renewal of the casino employee key license of the petitioner, Alan M. Hade, for the years 1984, 1985, 1986, 1987 and 1988. In this letter, the Division sets forth certain negative information regarding the petitioner's financial stability, integrity

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and responsibility; however, it makes no recommendation as to the petitioner's application to renew his casino employee key license. By letter dated December 9, 1988, Mr. Hade was advised of the possibility that his application for renewal might be denied based on the information contained in the Division's November 15, 1988 letter (as revised on May 31, 1989). Mr. Hade requested a hearing and the matter was transmitted to the Office of Administrative Law on January 9, 1989, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The prehearing conference was held before Administrative Law Judge Stephen W. Thompson on March 14, 1989. At that time, the parties agreed that the issue in this matter is whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino employee key licensure, pursuant to N.J.S.A. 5:12-89(b). After the prehearing conference, the matter was transferred to the undersigned for purposes of conducting the hearing and rendering an initial decision.

It was initially represented to the Office of Administrative Law that Guy S. Michael, Esq., who appeared at the prehearing conference, and Stephen B. Kirschner, Esq., the petitioner's New York attorney, would be co-counsel in this matter. Jeffrey I. Aaron, Esq., an attorney of the State of New Jersey moved to allow Mr. Kirschner to appear pro hac vice and Mr. Kirschner submitted an affidavit indicating that he had satisfied all the conditions for his appearance as set forth in R. 1:21(a), including the payment to the Client's Security Fund and Ethics Financial Committee. After reviewing the papers, I issued an order dated May 8, 1989, allowing Mr. Kirschner to appear pro hac vice in this matter. At the hearing, it was represented by Mr. Michael that Mr. Kirschner would not serve as co-counsel since he would be a witness for the petitioner.

The hearing was initially scheduled for May 25, 1989, but was adjourned at the request of Mr. Michael. The matter was rescheduled and heard on August 4, 1989, at the Absecon City Hall in Absecon, New Jersey. After receipt of additional documentation from the petitioner, and the period of time for the Division's comments thereon, the record in this matter closed on August 25, 1989.

FACTUAL FINDINGS

I FIND that the basic facts in this matter are not in dispute.

Since 1970, the petitioner has worked for the casino industry in various marketing positions. Between 1970 and 1975, he worked for casinos in St. Martin and Puerto Rico. Thereafter, he worked in the New York City marketing offices of a number of Nevada and New Jersey casinos.

Between June 3, 1983 and May 20, 1985, Mr. Hade worked as a marketing executive for the former Atlantis Hotel and Casino (Atlantis). During that period, he was divorced and he worked seven days a week and as many as twenty hours a day. Mr. Hade maintained apartments in New York City and in the Atlantic City area, and he traveled back and forth between these two cities as part of his job. Mr. Hade accumulated a number of debts, primarily credit card charges, some of which were for purchases made with his credit cards by his then girlfriend. For a while the petitioner was so busy at work that he did not know that his girlfriend had made substantial purchases with his credit cards. Initially, Mr. Hade was not concerned about these debts since he was earning a good salary (P-2), and he had no reason to believe that his employment would not be continuous.

In September 1984, Mr. Hade's New York City apartment was robbed and during the incident, he was mugged and shot. Mr. Hade spent three weeks in the hospital and he had to take off from work for three months in order to complete his recovery.

In February 1985, Mr. Hade fell down some subway steps in New York City subway steps and he was injured, specifically his lung collapsed (P-1). After this accident, Mr. Hade was again not able to work for a while and he did not return to work until May 23, 1985, when he obtained a casino marketing executive position with Tropicana Hotel and Casino (now known as Trop World Casino and Entertainment Resort) (Trop World). Mr. Hade worked for Trop World until July 25, 1985. On that date, he suffered a medical relapse, his lung collapsed again. His physician, Dr. Paulino S. Cruz advised Mr. Hade to take off from work for an extensive period of time in order to regain his health.

Mr. Hade received medical treatment for the collapsed lung problem from February 1985 through February 1986 (P-1). Thereafter he was unsuccessful in his efforts to get a position with a casino, and he had no earned income during 1986 (P-3).

In 1987, Mr. Hade was again unsuccessful in his efforts to get a position with a casino; however during that year, he did work for a while as a private casino junket

representative (P-4, P-5, R-5). Mr. Hade did not obtain another full-time position until he started to work for Trop World on June 22, 1988, as a senior marketing executive. The petitioner is presently employed by Trop World as the regional manager of its New York City office. Mr. Hade is currently earning about $40,000 a year.

While he was ill, Mr. Hade initially received disability payments from the State and from Atlantis, both of which continued until May 1985. Also, Mr. Hade received $1800 every three months as a disability payment from his private insurance policy during the entire period of his illness. In 1985, Mr. Hade sold a piece of property for $155,000. After paying the mortgage and other costs, he received $90,000. Mr. Hade used this money for his living and medical expenses. Mr. Hade had to pay his own medical expenses since he did not have any medical insurance.

In June 1985, Mr. Hade remarried and his new wife quit her job with Atlantis and moved to New York City to live with her husband. The petitioner's wife did not initially get a job; however, she did work for a short time in 1986. In 1987, the petitioner's wife quit her job because of her pregnancy and the birth of their baby. Since November 1988, the petitioner's wife has had a full-time teaching position in New York City. Currently, the petitioner's wife is again pregnant. Mr. Hade had to pay the medical expenses for the first baby, however, the second child will be covered by their medical insurance.

The existence of the pre - 1985 debts is part of the negative information contained in the November 15, 1988 letter of the Division. Lawrence W. Bethea, an investigator employed by the Division, was assigned to review Mr. Hade's current application for the renewal of his casino employee key license. Mr. Bethea obtained the following information regarding Mr. Hade's financial circumstances (R-1), and these facts are included in the Division's November 15, 1988 letter:

1. Charge-off accounts with the National Westminster Bank in the amounts of $1,000.00 and $13,094.00 (R-4).

2. Charge-off accounts with Chase Manhattan Bank in the amounts of $8,956.00 and $7,456.00. As to this debt, on February 23, 1987, a judgment was filed in the New Jersey Superior Court against the petitioner by Chase Manhattan Bank (R-2, R-3).

3.A delinquent account with Norstar Bank of Commerce in the amount of $1,728.00.

4. A charge-off account with General Motors Acceptance Corporation (GMAC) in the amount of $13,600.00.

Mr. Hade stated that these debts were accumulated prior to 1985, and he was unable to make payments on them because of his extensive medical expenses as well as his living expenses, and the fact that he had little income during the periods of his illnesses and unemployment. According to Mr. Hade, he periodically contacted his creditors and informed them that he would start paying his debts as soon as he was able to work and was able to obtain a job. According to Mr. Hade, at no time did he ever consider declaring bankruptcy since he felt that he owed the money and had a responsibility to pay off his debts.

After he obtained the job with Trop World in June 1988, Mr. Hade stated he contacted his creditors and tried to arrange to pay off his debts in installment payments. Mr. Hade alleged that all of the creditors insisted on being paid in full. In October 1988, Mr. Hade talked to Mr. Kirchner about the situation and upon his advise, Mr. Hade again attempted to arrange for installment payments. When this failed, Mr. Hade again went to see Mr. Kirchner in November 1988, and thereafter Mr. Kirchner contacted the creditors and made financial arrangements for settling all the debts.

Mr. Kirschner confirmed that he made these financial settlements with the petitioner's creditors between March and July 1989. According to Mr. Kirschner, it took a substantial amount of time and effort to make these arrangements with the banks, their collection agencies and attorneys. Currently, Mr. Kirschner holds Mr. Hade's power of attorney to make the installment payments (P-12). Mr. Hade gives Mr. Kirschner's office a monthly check and the office then makes the appropriate payments to the various creditors. The petitioner is complying with the payment schedules.

During the hearing, it was established that the current status of his debts are as follows:

1. By settlements dated March 29, 1989 (P-11) and June 9, 1989 (P-10), Mr. Kirschner arranged that the debts owned to the Chase Manhattan Bank would be paid by installment payments.

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2. As of June 15, 1989, Mr. Kirschner arranged that the debts owed to National Westminster Bank (R-4) be paid by installment payments (P-7).

3. The delinquent account with Norstar Bank of Commerce has been paid in full (P-6).

4. As to the amount due to GMAC, Mr. Kirschner arranged a settlement, dated July 6, 1989, whereby Mr. Hade would sell his car and then pay the full amount of the debt to GMAC (P-8). In compliance with this settlement, Mr. Hade has advertised the sale of the car (P-9) and he anticipates that he will be able to sell the car shortly. The moneys received from the sale will be paid to GMAC and Mr. Hade will then pay the balance of the debt.

The other basis for the Division's negative comments regarding the petitioner's financial stability relates to certain individual retirement accounts (IRAs) reported on the petitioner's federal income tax returns. When Mr. Bethea initiated his review of the petitioner's renewal application, he read the reports regarding previous investigations by the Division and concluded that Mr. Hade had $8,000.00 in IRAs. During his oral interview with the petitioner, Mr. Hade told Mr. Bethea that he had withdrawn some money, apparently $2000.00 from his IRA account during 1987. It was established that this withdrawal was not reflected in the petitioner's federal income tax return for that year (R-5). As a result of his conversation with Mr. Bethea, the petitioner filed an amended federal income tax return for 1987 on May 5, 1989 (P-5). According to this return, Mr. Hade changed his income to reflect the IRA withdrawal and he paid $208.00 in taxes (P-4).

During the hearing, Mr. Hade stated that the $2,000.00 he withdrew from the IRA account in 1987 was part of the $4,000.00 he and his first wife put into the IRA account in 1982. When he and his first wife obtained a divorce, Mr. Hade got one-half of this IRA account and he transferred the $2,000.00 into a new account. This was Mr. Hade's only IRA account and he subsequently never added any money to the account. Mr. Hade stated that when his accountant, Arthur B. Kurtz, was preparing his federal income tax return for 1984, Mr. Kurtz questioned Mr. Hade about an IRA and Mr. Hade said he had an IRA account. According to Mr. Hade, he was referring to the fact that he still had the $2,000.00 in an IRA account and Mr. Kurtz misunderstood him and assumed that he

had added $2,000.00 to his IRA account. Mr. Kurtz listed the $2,000.00 IRA deduction in the petitioner's federal income tax return fo 1984 (R-6).

According to Mr. Hade, the same type of an error occured when Mr. Kurtz was making out his 1985 federal income tax return (P-2). It was represented at the hearing that Mr. Kurtz was in the process of preparing amended federal income tax returns for 1984 and 1985. These revised returns were received after the hearing and were placed into evidence as P-13 and P-14. According to these revised returns, Mr. Hade has paid an additional $1109.00 in taxes.

I **FIND** Mr. Hade to be credible witness as to the source of his indebtedness and his inability to make any substantial payments prior to obtaining a full-time position on June 22, 1988. However, I **FIND** it difficult to believe that Mr. Hade was deligent in his efforts to make the arrangements to pay these debts. It would appear that it was not until Mr. Hade was informed that the Commission might revoke his license that Mr. Hade, with the assistance of Mr. Kirschner took aggressive action to settle the matters and to start paying the debts. I **FIND** that Mr. Hade's efforts to pay his debts were at least in part motivated by his concern regarding the effect these outstanding debts had on his chances to obtain the renewal of his casino employee key license.

Additionally, I **FIND** it difficult to accept Mr. Hade's testimony regarding the "misunderstanding" between him and his accountant about the $2,000.00 IRA deductions for the 1984 and 1985 income tax years. Mr. Hade is 42 years old and appears to be a person of normal intellect. I assume that he understood he would get a tax break if he placed $2000.00 in an IRA account during the tax year. It is very difficult for me to believe that Mr. Hade thought he could get the tax break on an annual basis without putting additional money into the IRA account. However, I also recognize that Mr. Hade had medical and financial problems when these returns were prepared which may have affected his attentiveness to other matters.

CONCLUSIONS OF LAW

By statute, the burden is on the petitioner to show by clear and convincing evidence that he possesses the requisite financial stability, integrity and responsibility for casino employee key licensure, pursuant to N.J.S.A. 5:12-89b.

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Mr. Hade has worked in various positions in the casino industry for almost twenty years, and apparently has done a reputable job since the Division's investigation has disclosed no negative comments.

For a four-year period, Mr. Hade had a number of serious problems to contend with - his illnesses and inadequate insurance coverage, his outstanding debts and his lack of earned income due to unemployment, as well as a new marriage and the start of a family.

Although the petitioner could have handled his financial matters better during that period of time, the negative comments raised by the Division when viewed against Mr. Hade's many years of steady employment and financial stability are insufficient to refute the petitioner's presentation as to his good character, honesty and integrity. I **CONCLUDE** that the petitioner has shown by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that Mr. Hade's application for the renewal of his casino employee key license be approved.

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

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

October 10, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-10-89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 13 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioners:

P-1 Memorandum from Doctor Paulino S. Cruz, dated June 29, 1989

P-2 The 1985 U.S. Individual Income Tax Return of Alan Hade

P-3 Letter from Alan Hade, dated May 29, 1987

P-4 The amended U.S. Individual Income Tax Return for 1987 for Alan and Susan Hade

P-5 The amendment to the New York State Income Tax Return of Alan and Susan Hade for 1987

P-6 The judgment entered against Alan Hade by the Norstar Bank of Commerce and the payment thereof

P-7 Stipulation of Settlement between the National Westminister Bank and Alan Hade, dated June 15, 1989

P-8 The Stipulation of Settlement between General Motors Acceptance Corporation and Alan Hade, dated July 6, 1989

P-9 Invoices for advertisement for the sale of Mr. Hade's vehicle

P-10 Stipulation of Settlement between Chase Manhattan Bank and Alan Hade, dated June 9, 1989

P-11 Stipulation of Settlement between Chase Manhattan Bank and Alan Hade, dated March 29, 1989

P-12 The power of attorney given by Alan Hade to Steven B. Kirschner

P-13 The amended U.S. Individual Income Tax Return of Alan Hade for 1984

P-14 The amended U.S. Individual Income Tax Return for Alan and Susan Hade for the calendar year 1985, dated August 9, 1985

For the Respondent:

R-1 Two page credit bureau file on Alan Hade

R-2 Judgment for Chase Manhattan Bank against Alan Hade, dated Februay 23, 1987

R-3 Complaint filed by Chase Manhattan Bank against Alan Hade, with attachments, dated August 6, 1986

R-4 Letter from Melvin C. Cohen, dated May 15, 1989, with attachments

R-5 The 1987 U.S. Individual Income Tax Return of Alan and Susan Hade

R-6 The 1984 U.S. Individual Income Tax Return of Alan Hade

WITNESSES:

For the Petitioner:

Alan M. Hade
Steven P. Kirschner

For the Respondent:

Lawrence Bethea

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-28
LICENSE NO. 03775-21
OAL DOCKET NO. CCC 7405-88
ORDER NO. 89-35-12

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

Complainant,

v.

HAROLD C. HARMAN

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of August 30, 1989,

IT IS on this 27th day of November 1989, ORDERED that the recommendation to dismiss the complaint is rejected for the following reasons:

> Theft of casino complementary services (comps) is a serious regulatory matter. The Commission has frequently found such conduct to be a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(2). See e.g., State v. Joseph J. Talley, Docket No. 87-410 (Commission order March 9, 1988), which involved the receipt of complementary meals using a forged complementary

service report; State v. Michael P. Waters, Docket No. 84-419 (Commission order June 12, 1987), where a casino employee permitted a friend to use the names of hotel guests to receive comps; and State v. Tracey R. Owens, Docket No. 86-212 (Commission order February 19, 1988), and State v. Trudy J. Seher, Docket No. 87-402 (Commission order March 10, 1988) where employees made false entries into the casino's computer so friends could receive comps.

In this case Mr. Harman's conduct in supplying blank comp forms to a fellow employee clearly compromised both his employment relationship and the conduct of gaming operations. Moreover, the record reveals several aggravating factors: (1) the respondent's position as a floorperson; (2) the conduct occurred for a period of six months; (3) the respondent signed false rating cards for two of his supervisors on numerous occasions prior to his involvement in the comp scheme at issue; (4) the respondent ceased providing blank comp forms only after he was arrested for this conduct; and (5) the respondent was a mature individual in his mid-30's when the conduct occurred. In addition, Mr. Harman introduced no evidence either in the form of testimony or letters of reference attesting to his accomplishments or his current good character, honesty and integrity.

In view of these factors, the Commission finds that the respondent's offense of theft by deception in violation of N.J.S.A. 2C:20-4, is disqualifying pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g). The Commission further finds that the respondent has failed to establish that he possesses the good character, honesty and integrity required for continued licensure by N.J.S.A. 5:12-89(b)(2) and -90(b).

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked; and

IT IS FURTHER ORDERED that Harold C. Harman is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:48-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7405-88
AGENCY DKT. NO. 86-28

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
HAROLD C. HARMAN,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Gregory Imperiale, Esq., for respondent

Record Closed: June 9, 1989 Decided: July 19, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on January 23, 1986, seeking revocation of the respondent's casino employee license. The Division based its complaint upon the respondent's arrest on December 13, 1985, for theft by deception and conspiracy, in violation of *N.J.S.A.* 2C:20-4 and *N.J.S.A.* 2C:5-2. These are the issues:

1. With specific reference to the Division's allegation that the respondent knowingly provided Phyllis Showalter with falsified complimentary services between August 1 and October 31, 1985, during the course of his licensed employment as a floor person with Caesar's Boardwalk Regency Hotel, has the respondent committed theft by deception in the third degree, contrary to *N.J.S.A.* 2C:20-4, thus disqualifying him from licensure

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pursuant to section 86c(1) of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*), even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act?

2. Based upon the foregoing alleged conduct, has the respondent committed an offense which would render his continued licensure inimical to the policy of the Casino Control Act and to casino operations, pursuant to sections 86c(2) and 86g of the Act?

3. Has the respondent, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to section 90h of the Act?

4. Does the respondent possess the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the Act?

PROCEDURAL HISTORY

Based upon the Division's complaint filed on January 23, 1986, the Casino Control Commission on February 10, 1986, entered a preliminary suspension of the respondent's casino employee license. The criminal complaint against the respondent was dismissed by the Division of Criminal Justice on July 15, 1986. By letter to the Commission dated August 8, 1986 (Exhibit R-3), the Division of Gaming Enforcement stated that it did not object to vacation of the suspension order, but that it did object to dismissal of its complaint. On August 20, 1986, the Commission voted to vacate the suspension.

On October 7, 1986, the Honorable Richard L. Voliva, Jr., ALJ, conducted a prehearing conference in this matter. The respondent subsequently failed to appear for a scheduled proceeding and Judge Voliva filed an Initial Decision - Failure to Appear with the Casino Control Commission on April 15, 1988 (OAL Dkt. No. CCC 5620-86). On June 7, 1988, the Commission entered an order revoking the respondent's casino employee license. However, the respondent subsequently filed a petition for rehearing pursuant to *N.J.S.A.* 5:12-107(d), and on October 6, 1988, the Commission granted the respondent's petition and vacated its order of June 7, 1988. On October 11, 1988, the matter was again transmitted to the Office of

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

Additional prehearing conferences were held on January 31 and March 20, 1989. The hearing was thereafter held on May 19, 1989, in Absecon, New Jersey. At the request of the Division of Gaming Enforcement, the record remained open following the hearing to permit the Division to review documentary evidence offered into evidence by the respondent and to determine whether the Division would need to present further testimony. By letter received May 30, 1989, the Division reported its position that no further testimony would be required. I subsequently determined that review of the hearing transcript would be necessary, and the record closed when the transcript was received on June 9, 1989.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent resides in Philadelphia, Pennsylvania, with his wife and two children. He works as a field representative for Franklin Reader Service and also works for his brother, Dr. Leonard Harman. The respondent first obtained a casino employee license in 1979.

The respondent began his employment in the casino industry as a craps dealer at Caesar's Boardwalk Regency Casino and Hotel in August 1979. He was subsequently licensed to deal blackjack and baccarat. In 1985, the respondent obtained a floor person license endorsement. As a floor person, the respondent's duties included observing the games, monitoring the dealers and keeping track of payouts to patrons. Beginning in 1979, the respondent's immediate supervisor was Nelson Italiano.

Testifying at the hearing, the respondent acknowledged that he was approached by Mr. Italiano in late 1981 or early 1982 and was asked to sign a patron rating card. Such a card describes the wagering activities of an individual player, including the amounts bet and the course of time during which the patron was wagering at a gaming table. The rating card would be used to determine the complimentary services (comps) to which the patron would be entitled. Players with higher ratings would receive greater comps.

The respondent testified candidly that he knew there was something wrong with signing the rating card. Nevertheless, he did sign the card. According to the

respondent, the same procedure occurred a few years later when Mr. Italiano told him that he needed a favor. When asked as to how many occasions he had signed rating cards for Mr. Italiano, the respondent answered that he did not believe it was more than half a dozen times. He received absolutely nothing in return from Mr. Italiano for having signed the cards.

The respondent also testified candidly that there was one other person involved in asking him to sign rating cards. Late in 1985, Vince Farina, who was the respondent's pit boss, asked the respondent to sign rating cards. The respondent testified that this did not happen on more than three occasions. This conduct ended when Mr. Farina shook hands with the respondent and while doing so gave the respondent $80. According to the respondent, he shortly thereafter went up to Mr. Farina on the casino floor and said, "I wash my hands of this." The respondent acknowledged that he did not report any of these incidents involving the signing of rating cards to anyone in the casino prior to being questioned by the authorities.

The respondent also candidly acknowledged that he became involved in a "comp scheme" at the suggestion of Phyllis Showalter, a restaurant employee at Caesar's. The respondent explained that as a floor person, he was not authorized to write a comp for a patron. However, he was able to obtain blank comp forms which he then gave to Ms. Showalter. This transaction occurred either on the casino floor or in the restaurant. When asked why he did this, the respondent replied, "Good question. I wish I knew." He was not certain how Ms. Showalter used the comps. However, the respondent also acknowledged that on occasion Ms. Showalter handed him small amounts of money, ranging from $10 to $20. The respondent could not recall exactly the number of occasions when he provided Ms. Showalter with false comps. He did recall that the transactions occurred over a six-month period between 1984 and 1985.

The respondent also testified concerning his contact with law enforcement authorities. On a morning in December 1985, two New Jersey State police detectives assigned to the Division of Gaming Enforcement came to the respondent's home and introduced themselves. Indicating that they could arrest him at that moment, the agents suggested that the respondent come to their offices and talk about what he knew. The respondent thought it over and a short while later presented himself at the agents' offices with the intention of volunteering information. The respondent was fingerprinted and was charged with theft by deception from Caesar's by purposefully creating a false impression (by supplying Phyllis Showalter

with false and unauthorized comps) in violation of *N.J.S.A.* 2C:20-4. The respondent was also charged with conspiracy to commit theft by deception, in violation of *N.J.S.A.* 2C:5-2. He was released on his own recognizance.

Pursuant to his cooperation with the Division of Gaming Enforcement, the respondent testified before a grand jury. By letter to respondent's counsel dated February 11, 1986 (Exhibit R-2), Deputy Attorney General Bertha Scott of the Division of Criminal Justice confirmed that her office wished to interview the respondent in conjunction with investigations concerning allegations of criminal activity in Atlantic County. She confirmed that the respondent would receive use immunity for the information he provided. This immunity was specifically conditioned upon the respondent's complete cooperation and truthful testimony before a grand jury or at trial. By letter to respondent's counsel dated June 10, 1986 (Exhibit R-1), Ms. Scott advised that if evaluation of the information provided by the respondent in an interview resulted in a determination that he could provide relevant information, he would receive transactional immunity from the Division of Criminal Justice in exchange for his information and cooperation with the state in its investigation. Again, this immunity was specifically conditioned upon the respondent providing truthful information and complete cooperation before a grand jury and at trial. In addition, the immunity would not apply in the event the respondent should perjure himself. Finally, Ms. Scott confirmed that the state would dismiss the charges brought against the respondent in December 1985. It is undisputed that the respondent did fully cooperate and that the charges were subsequently dismissed in July 1986. In August 1986, the Casino Control Commission vacated its preliminary suspension of the respondent's casino employee license.

The respondent did not immediately return to the casino industry. Instead, he became a teacher at Pleasantville High School and then entered chiropractic school. At the age of 40, the respondent is in his third year of chiropractic school and he is maintaining a low B grade average. The respondent seeks to maintain his casino employee license so that he can work in a casino on weekends and during school breaks, in order to provide for his family's needs.

The respondent testified that he has never been convicted of any crimes. Other than the circumstances of the present controversy, the respondent has never been in any trouble at all with the law. It was the respondent's sincere testimony that he believed his full cooperation with law enforcement authorities would have resulted in the Division of Gaming Enforcement dismissing its complaint against him.

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

CONCLUSIONS OF LAW

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

Under sections 129 and 90e of the act, the Commission may revoke the licensure of any licensee disqualified on the basis of his conviction of any offense which is specifically listed under section 86c(1) as an automatic disqualifier from licensure. In accordance with section 86g, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In December 1985, the respondent was charged with theft by deception in the third degree, contrary to *N.J.S.A.* 2C:20-4 and conspiracy to commit theft by deception, contrary to *N.J.S.A.* 2C:5-2. These are offenses specifically identified as disqualifiers under section 86c(1) of the act. It is undisputed that this alleged conduct was not prosecuted. Ultimately, the charges were dismissed.

Pursuant to *N.J.S.A.* 2C:20-2b(2) and *N.J.S.A.* 2C:20-4, a person is guilty of theft by deception in the third degree if he purposely obtains property of another in an amount exceeding $500, but less than $75,000, by creating a false impression. The credible evidence in the record establishes that the respondent knowingly provided blank complimentary service cards to a fellow employee over a six-month period in 1985 with the purpose of obtaining property of the licensed casino by creating a false impression. The false impression created was that the complimentary services were properly authorized. However, the credible evidence in the record does not establish that the amount involved in the theft by deception was at least $200. Theft in an amount less than $200 constitutes a disorderly persons offense, pursuant to *N.J.S.A.* 2C:20-2. Accordingly, I **CONCLUDE** that the respondent has committed the disorderly persons offense of theft by deception, contrary to *N.J.S.A.* 2C:20-4. This is not an automatic disqualifier under section 86c(1) of the act.

Pursuant to sections 86c(2) and 86g of the act, the Commission may revoke the licensure of any licensee who has committed an offense which would render his continued licensure inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey. Disqualification on the basis of inimicality may arise from commission of a disorderly persons offense. In the *Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License*, Dkt. No. 87-CSI-10 (Commission Decision September 1, 1988).

"Inimical offenses" are those offenses which indicate, due primarily to circumstances surrounding the offense, that participation by that individual would be contrary to the public interests underlying the Casino Control Act. The Casino Control Commission set forth the following analysis in its opinion, *In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License*, Dkt. No. 79-CL-1 (Commission Decision February 26, 1979, at p. 15):

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

Thus, it is clear that the concept of rehabilitation is subsumed in the inimicality analysis and that rehabilitation factors must be considered before concluding that the offense in question is or is not "inimical" under section 86c(2). See, *Davis v. Division of Gaming Enforcement, N.J.A.R.* 301, 314 (1985). The rehabilitation factors which are an integral part of the inimicality analysis are set forth in section 90h of the act:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

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

As a floor person, the respondent was responsible in part for monitoring the integrity of the games being dealt under his supervision. For approximately six months in 1985, the respondent was involved in a scheme with a fellow employee to obtain unauthorized complimentary services from a licensed casino. By acting in this dishonest manner, the respondent committed theft by deception from his employer.

It must be noted that the respondent had previously acted improperly on a number of occasions between 1982 and 1985 by signing patron rating cards at the request of his supervisors. He stopped this activity after being paid $80. Pursuant to the scheme to obtain complimentary services, the respondent also received small amounts of money from his fellow schemer. The respondent knew these activities were wrong, but he was unable to explain why he had participated.

Although the respondent's wrongful actions were limited in number, they occurred over a substantial period of time. Thus, they could not fairly be described as isolated; rather, they were repeated. The respondent is now 40 years old. His activities which constituted the offense of theft by deception ended in 1985, when he was in his mid-30's. The evidence in the record does not reveal any social conditions which may have contributed to the offenses.

After being approached by law enforcement authorities in December 1985, the respondent agreed to cooperate. As a result of his satisfactory cooperation with the government investigation, the criminal charges against him were dismissed. The respondent subsequently obtained employment as a school teacher in Pleasantville,

New Jersey. He also was admitted to chiropractic school and is in his third year of a five year program. The respondent maintains a low B grade average. In addition to his academic work, the respondent is also employed part-time for his brother and as a field representative for Franklin Readers Service.

As noted above, whether an offense is "inimical" to the act and to legalized gaming is a question that can only be resolved in the circumstances of each case. The question in this case is a close one. The respondent's offenses certainly touched upon his duties as a licensed casino employee. There is no doubt that theft from his casino employer is a serious offense. The reason for this misconduct remains unexplained. On the other hand, four years have passed and the respondent has been employed as a teacher and he is successfully acquiring addition academic schooling.

Except for the conduct which is central to this proceeding, the respondent has had no involvement with the criminal justice system. In addition to the foregoing factors, the inimicality analysis should include consideration of whether it is likely that the respondent would engage in unlawful conduct in the future. His law abiding conduct for the last four years is certainly some evidence that he would not. In addition, the respondent's admission of his past wrongdoing was sincere and credible. It is very unlikely that the respondent would engage in any further unlawful conduct.

In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent's continued participation as a casino employee licensee would not justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations, nor would it create or enhance the dangers of unsuitable, unfair or illegal practices in the conduct of gaming or gaming operations. Therefore, I further **CONCLUDE** that the respondent has not committed offenses which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(2) and 86g of the Casino Control Act.

Pursuant to section 80a of the act, it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Among these qualifications are good character, honesty and integrity, pursuant to section 89b(2) and 90b of the act. The foregoing rehabilitation factors which have been considered in the analysis of "inimicality" are

equally relevant in determining whether the respondent possesses the good character, honesty and integrity required for licensure. *In the Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License, supra.* For the reasons set forth in support of the conclusion that the respondent has not committed an offense which would render his continued licensure inimical to the policy of the Casino Control Act and to casino operations, I further **CONCLUDE** that the respondent has established his good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Harold C. Harman be **DISMISSED**.

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

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

July 19, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

7/20/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

July 24, 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

R-1 Letter dated June 10, 1986

R-2 Letter dated February 11, 1986

R-3 Letter dated August 8, 1986

WITNESSES

For the petitioner:

Harold C. Harman

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-136
REGISTRATION NO. 41319-40
OAL DOCKET NO. CCC 00111-89
ORDER NO. 89-31-15

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. HOWARD HAYES, JR., Respondent.	ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 9th day of August 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 111-89
AGENCY DKT. NO. 89-136

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
HOWARD HAYES, JR.,
Respondent.

James Armstrong, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Howard Hayes, Jr., the respondent, pro se

Record Closed: June 13, 1989 **Decided:** June 22, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Howard Hayes, Jr.'s casino hotel employee registration no. 41319-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by

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reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a pot washer at Bally's Park Place Hotel and Casino. By complaint to the Commission, filed November 18, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of possession of a controlled dangerous substance (cocaine) with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (the predecessor statute to N.J.S.A. 2C:35-5a(1) (third degree)), which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on November 28, 1988, that he had the right to a hearing, and that failure to respond within 15 days could result in the revocation of his registration. By application dated December 1, 1988, which was received by the Commission on December 5, 1988, the respondent requested a hearing. On January 5, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 9, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Lillard E. Law on March 20, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:24-19(a)(1) (sic. N.J.S.A. 24:21-19a(1)) which is comparable to N.J.S.A. 2C:35-5a(1), Possession of a Controlled Dangerous Substance with Intent to Distribute (Cocaine), now a crime of the Third Degree.

B. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on June 13, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On November 11, 1986, the respondent and a friend, William Bullock, went to a bar in Atlantic City to see if they could purchase drugs. At the bar they saw Sonny Andrews whom they knew as a drug dealer. Mr. Hayes purchased two bags of cocaine from Mr. Andrews. Mr. Hayes then asked Mr. Andrews to drive them to Hoagie City, a restaurant.

While en route to Hoagie City, a police officer saw one of the occupants of the car throw a beer bottle out the car's window. The officer then stopped the car. When he approached the car, the officer saw Mr. Hayes reach into his jacket pocket. The officer had Mr. Hayes exit the vehicle, and he searched Mr. Hayes. The officer reports that he found three plastic bags containing a white powder in Mr. Haye's pocket. This substance tested positive as being one and one-half grams of cocaine. The respondent was also found to be in possession of marijuana. Mr. Andrews had one bag of cocaine and one bag of methamphetamines in his pocket. A search of the car's trunk revealed 4 large plastic bags containing a total of 109 grams of marijuana and 32 small plastic bags containing a total of 105 grams of marijuana (P-2). All three individuals were then arrested by the Atlantic City Police Department.

On December 4, 1986, the respondent was indicted in Atlantic County Superior Court Indictment No. 86-12-2433-D, on two counts of possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 24:21-20a(1), which is the predecessor statute to N.J.S.A. 2C:35-10a(1), two counts of possession of a controlled dangerous substance (cocaine) with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), which is the predecessor statute to N.J.S.A. 2C:35-5a(1) (third degree), and one count of conspiracy to distribute a controlled dangerous substance, in violation of N.J.S.A. 24:21-24, which is the predecessor statute to N.J.S.A. 2C:5-2(a)(1) (P-1).

On January 20, 1987, the respondent entered a plea of not guilty to the indictment. On March 4, 1987, the respondent retracted his plea of not guilty and entered a plea of guilty to one count of possession of a controlled dangerous substance with the intent to distribute, with the remaining counts to be dismissed. On March 27, 1987, the respondent was sentenced to two years' probation, was required to maintain a job while on probation, was ordered to pay a $30.00 penalty to the Violent Crimes Compensation Board, and was ordered to forfeit $161.00 which had been seized from his person on the night of the arrest (P-3).

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On January 15, 1986, the respondent was arrested by the Atlantic City Police Department and was charged with possession of a controlled dangerous substance with the intent to distribute. Mr. Hayes was found to have seven bags of marijuana in his possession (P-4). On February 11, 1986, the respondent was indicted in the Superior Court, Atlantic County, Indictment Number 86-02-0274-D, and was charged with possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1) (P-5). On May 6, 1986, the respondent entered a plea of guilty to the charge, and on May 23, 1986, the respondent was sentenced to two years' probation (P-6).

On April 22, 1987, the respondent was arrested by the Atlantic City Police Department and was charged with having burglarized several vehicles on Maryland Avenue in Atlantic City (P-7). On May 19, 1987, the respondent was indicted in the Superior Court, Atlantic County, Indictment Number 87-05-0877-D, and was charged with three counts of burglary in violation of N.J.S.A. 2C:18-2 and one count of theft in violation of N.J.S.A. 2C:20-3 (P-8). On June 29, 1987, the respondent entered a plea of not guilty to the indictment. On October 5, 1987, the respondent retracted his plea of not guilty and entered a plea of guilty to one count of burglary. On October 30, 1987, the respondent was sentenced on the one burglary count to be incarcerated for nine months in the Atlantic County Jail with credit for 24 days, was ordered to pay a $30.00 Violent Crimes Compensation Board penalty, and the remaining charges were dismissed. At the same time, the respondent's two prior sentences of probation were revoked and he was sentenced to two concurrent three-year terms of incarceration which were to be served consecutive to his nine-month sentence (P-9). After serving five months of his three-year, nine-month sentence, the respondent was entered into the Intensive Supervision Probation (ISP) program, and he is still in this program (R-1).

The respondent is 28 years old and was born on November 23, 1961. He was raised by his father, and he helped raise two sisters. As a child, he attended church every Sunday, but he no longer does so. He participated on the football and basketball teams in junior high and high school. At 18 he left home to live with his mother, and as such, he never graduated from high school. Prior to entering the ISP program, he rarely worked, and had a poor attitude. Since entering the program, he works regularly, has a more positive attitude, and no longer associates with his former circle of friends. The respondent lives with his girl friend and supports his three children.

In 1980, the respondent applied for a job in the Golden Nugget; however, he testified that he was never told to report for a job. In 1982 to 1983, the respondent worked as a busboy at the Claridge Hotel and Casino. He received several disciplinary notices and eventually was terminated for eating in an unauthorized area. On April 8, 1988, the respondent became employed as a pot washer at Bally's. He received a written warning on September 18, 1988, for excessive absenteeism.

Mr. Hayes submitted one letter in his behalf. James D. Salvaryn, Intensive Supervision Probation Officer, in a letter dated June 6, 1989, wrote:

> I am writing on behalf of Howard Hayes, who has been under my supervision in the Intensive Supervision Program since 3-24-88. Since his release, Mr. Hayes has remained incident free and his overall adjustment could be considered good. As of 4-30-89, Mr. Hayes has been given 68 urine tests which have all tested negative for CDS. He has been in for his required curfew when checked. This Officer has performed 56 curfew checks as of 4-30-89. In total, I have had 271 contacts with Mr. Hayes (as of 4-30-89). In the course of my supervision of Mr. Hayes, we have had discussions in which he has verbalized a desire to remaining law abiding and take care of family responsibilities. In reviewing his performance, I feel he has made an excellent effort towards these ends. Mr. Hayes works hard at Bally's Park Place, washing pots to provide for his children. At home, he takes an active interest in his children and is a good parent.
>
> Mr. Hayes was raised in a high crime area of Atlantic City and still resides in what is considered one of the highest crime areas by local law enforcement. However, Mr. Hayes has managed to avoid trouble and remain conviction free since his release. Through discussions, Mr. Hayes has gained insight into how even his own family would lead him into situations that could result in an altercation with others that ultimately could result in legal problems. Mr. Hayes has learned how to avoid getting hooked into such situations and is a better person for it.
>
> In the interest of giving a complete picture of Mr. Hayes' performance regarding ISP, mention must also be made of the negative aspects of his time under supervision. Basically, Mr. Hayes' shortcomings on ISP can be attributed to a bit of laziness. Although not of the magnitude to warrant an Incident Report, Mr. Hayes has fallen behind in community service on occasion, requiring some pressure being applied by this Officer to have him regain compliance. Mr. Hayes is required to perform 16 hours of community service per month. Currently, as of 5-31-89, Mr. Hayes is 16 hours behind and will be performing extra community service shortly to become current. Mr. Hayes has also been slow in setting up an evaluation required by the Program and must also be kept after to make the required number of contact calls to this Officer.

> However, as mentioned earlier, Mr. Hayes' overall adjustment to ISP supervision is good. He has demonstrated proofs of rehabilitation. His general outlook is positive and his demanor courteous. In dealing with the various situations he has encountered while under ISP supervision, Mr. Hayes has handled himself in a mature and fairly responsible manner. I believe he has matured since going to prison and while under supervision, and is a significantly different (and better) person than when involved in the illegal activity that brought him into ISP. Should all continue to go well for Mr. Hayes, he may be discharged form ISP approximately in August of this year. [R-1]

In addition, the respondent's father, Mason Coley, testified on the respondent's behalf. Mr. Coley testified that before his son went to prison, the respondent would not work. Since he began participating in the ISP program, he now works and applies himself to his work. Before going to prison, Mr. Coley usually needed to provide additional money to the respondent to support his family at the end of each month. The respondent is now self-sufficient, and Mr. Coley no longer needs to assist the respondent financially every month. Prior to going to prison, the respondent would not accept advice from anyone, and he associated with "the wrong crowd." Since being released from prison, Mr. Coley has seen a change in the respondent's attitude. The respondent now accepts advice, and he no longer associates with the people who were a bad influence on his life. The respondent supports his girl friend and their three children and performs his community service.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. As a result of my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence during both the hearing and my review of the record, I question the respondent's credibility. There were numerous inconsistencies in the respondent's testimony. First, he testified that no marijuana was found on him on November 11, 1986. Upon cross-examination, he admitted that a bag containing "marijuana residue" was found in his possession. Next he represented that he had no other offenses. Upon cross-examination it was disclosed he had both a prior and subsequent conviction. He stated that he never sold marijuana or cocaine. Upon cross-examination he admitted his arrest on charges of selling marijuana in January 1986 and subsequently admitted selling drugs on three occasions in 1985. The respondent testified that he had not received any disciplinary actions at Bally's, but upon

cross-examination, he admitted that he had received a written warning in September 1988 for excessive absenteeism. Based upon these and other inconsistencies in the respondent's testimony and my observations of his demeanor, I am somewhat skeptical of his testimony. . . .

FINDINGS OF FACT

1. On March 27, 1987, the respondent was convicted of one count of possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1).

2. On March 27, 1987, the respondent was sentenced to two years' probation.

3. On May 23, 1986, the respondent was convicted of possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1).

4. On May 23, 1986, the respondent was sentenced to two years' probation.

5. On October 30, 1987, the respondent was convicted of burglary in violation of N.J.S.A. 2C:18-2.

6. On October 30, 1987, the respondent was sentenced to serve nine months in the county jail, his earlier probations were revoked, and he was sentenced to two concurrent three-year sentences to be served consecutive to the nine-month sentence.

7. On March 24, 1988, after serving five months of his sentence, the respondent was accepted into the Intensive Supervision Program. He is still in this program.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, provides in pertinent part:

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

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

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

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree.

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offense or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the registrant when the offense or conduct was committed;

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

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

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of

the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends, that the respondent committed a violation of N.J.S.A. 2C:35-5a(1), possession of a controlled dangerous substance (cocaine) with the intent to distribute, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued registration.

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

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's conviction in the Superior Court of New Jersey, Atlantic County, on March 27, 1987, for possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1) constitutes a violation of N.J.S.A. 2C:35-5a(1) (third degree), which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> . . .
>
> b. Any person who violates subsection a. with respect to:
> (1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, in a quanity of five ounces or more including any adulterants or dilutants, is guilty of a crime of the first degree.
>
> . . .

> (3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $50,000.00 may be imposed;

The Division established, and the respondent admitted during his testimony, that he had been convicted of possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(3), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;

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

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

In regard to the first criterion, Howard Hayes, Jr., is a casino hotel registrant and is employed as a pot washer. He does not have direct responsibilities for actual gaming activities and does not come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (cocaine) with the intent to distribute. Because the offense is a listed disqualifier under section 86c(1), it is very serious. The use, possession or distribution of drugs in our society is not acceptable and cannot be tolerated in a highly regulated industry such as the casino industry.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent and a friend went out seeking to purchase drugs. The respondent did purchase drugs and then he went for a ride with his supplier. This was done while the respondent was still on probation for a previous drug offense.

Fourth, the respondent's misconduct occurred in November 1986, when it ceased. The respondent did, however, have a subsequent criminal violation.

Fifth, the respondent was nearly 25 years old at the time of this offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. He has a prior 1986 conviction for possession of a controlled dangerous substance (marijuana) with the intent to distribute and a subsequent 1987 burglary conviction. In addition, he admitted selling drugs on three prior occasions in 1985.

Seventh, the respondent was raised in a high crime area of Atlantic City. He was raised by his father, and the respondent had to help raise his two sisters. He did not

complete high school as he elected to go live with his mother when he turned 18. He associated with a criminal element and drug culture which had a negative impact on him.

Eighth, the respondent has made attempts at rehabilitating himself. He has a job and supports his family. He had a good record in prison, and he was selected for the ISP program. He has made progress while in the program. On the other hand, this drug offense was committed while he was still on probation for a previous drug offense. He was placed on probation again and he committed a subsequent burglary. The respondent is still serving his sentence. If the respondent continues to progress, he may be eligible for discharge from supervision in August. In addition, he does have one minor disciplinary action for excessive absenteeism issued to him by his employer.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a pot washer. He had no responsibility for any casino gaming activity, and does not have contact with casino patrons. Considering the nature of the position he holds, the respondent's work record in the industry, his lack of demeanor and candor at the hearing, the fact that he committed a drug offense while on probation from a previous drug offense, his subsequent offense of burglary, the fact that he has yet to be released from supervision, the relatively short period of time which has elapsed since the offenses were committed, the relatively short period of time which has elapsed since he was released from incarceration, his lack of involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d. I believe that insufficient time has elapsed since his release from prison in order for the respondent to establish his rehabilitation, and he has yet to successfully complete his probationary program.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **SUSTAINED** and that registration no. 41319-40 be revoked.

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

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

June 22, 1989
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6-23-89
DATE

Amy L Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 27 1989
DATE

Jayne A. Tlumacki/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Superior Court, Atlantic County Indictment Number 86-12-2433-D, dated December 4, 1986

P-2 Atlantic City Police Department Investigation Report, dated November 11, 1986

P-3 Superior Court, Atlantic County, Judgment of Conviction, dated March 27, 1987

P-4 Atlantic City Police Department Investigation Report, dated January 15, 1986

P-5 Superior Court, Atlantic County, Indictment Number 86-02-0274-D, dated February 11, 1986

P-6 Superior Court, Atlantic County, Judgment of Conviction, dated May 23, 1986

P-7 Atlantic City Police Department Investigation Report, dated April 23, 1987

P-8 Superior Court, Atlantic County, Indictment Number 87-05-0877-D, dated May 19, 1987

P-9 Superior Court, Atlantic County, Judgment of Conviction, dated October 30, 1987

For the Respondent:

R-1 Letter of James D. Salvarya, Intensive supervision probation officer, dated June 6, 1989

WITNESSES

For the Petitioner:

None

For the Respondent:

Mason Coley, respondent's father

Howard Hayes, Jr., respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 90-EA-47; 89-225
APPLICATION NO. 76761-22
REGISTRATION NO. 80040-40
OAL DOCKET NO. CCC 1810-89 and
CCC 06213-89 (CONSOLIDATED)
ORDER NO. 89-47-19

APPLICATION OF ROBERT W. HENDRICKSON
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

ROBERT W. HENDRICKSON,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 14th day of December 1989, ORDERED that the initial decision is modified to indicate that N.J.S.A. 5:12-90(h) and -91(d) are the sections of the Casino Control Act which relate to rehabilitation rather than N.J.S.A. 5:12-91(b) as stated by the administrative law judge; and

ORDER NO. 89-47-19

IT IS FURTHER ORDERED that Robert W. Hendrickson's application for a casino employee license is granted and the complaint for revocation of his casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 6213-89,
1810-89
AGENCY DKT. NOS. 90-EA-47,
89-225

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ROBERT W. HENDERICKSON,
Respondent.

and

ROBERT W. HENDERICKSON,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

John Rosenberger, Esq., for petitioner/respondent Henderickson (Perillo & Rosenberger, attorneys)

Ralph Fusco, Deputy Attorney General, for respondent/petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: October 3, 1989 Decided: October 17, 1989

BEFORE JEFF S. MASIN, ALJ:

This matter involves consolidated cases in which the Division of Gaming Enforcement (DGE) has filed a complaint against Mr. Henderickson seeking sanction

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against his Casino Hotel Employee Registration and application by Mr. Henderickson for licensure as a casino employee. The Division filed its complaint against Henderickson with the Casino Control Commission ("Commission") on January 26, 1989. Henderickson filed an answer to the complaint on February 24, 1989. He also had filed an application for licensure as a casino employee and on July 12, 1989 the DGE filed a letter with the Commission in which it opposed licensure.

Following transmittal of the revocation proceeding to the Office of Administrative Law (OAL) as a contested case, pursuant to N.J.S.A. 54:14F-1 et seq. Honorable Joseph F. Fidler, A.L.J. issued a prehearing order on June 12, 1989 with respect to the issues to be determined in the revocation hearing. Subsequently, as a result of the transmittal of the licensing case and the direction of the Commission to consolidate the matters, the matters were scheduled for hearing before Judge Fidler. However, because of other commitments, the matter was transferred to Administrative Law Judge Jeff Masin, who heard the cases on October 3, 1989 at the Office of Administrative Law in Atlantic City. Prior to the start of the hearing Judge Masin issued an order consolidating the matters on the record.

The hearing concluded on October 3. The record closed following the hearing.

ISSUES

The issues to be considered in connection with both the revocation and licensure cases arise out the same set of circumstances. The complaint recited several incidents of arrest in which Mr. Henderickson was charged with a number of violations of law. These will be detailed below. In addition, they disclose his conviction upon a charge of Aggravated Sexual Assault, a violation of N.J.S.A. 2C:14-2(a)(1), a conviction which occurred as a result of his entering a retraxit plea of guilty to that charge on June 28, 1982. The complaint contended that as a result of his conviction for this offense Mr. Henderickson was automatically disqualified from licensure as the offense was a per se disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). In addition, the complaint contended that Henderickson failed to reveal his convictions and arrests and was therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86(b). This latter issue, concerning an alleged failure to reveal material information, was withdrawn at the prehearing.

The Division's objection letter with respect to the application for licensure as a casino employee recited the events set forth in the complaint and suggested that Mr. Henderickson was therefore not qualified for licensure. In addition, with respect to the licensure matter the Division claimed that he lacks the requisite good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89b(2) and 90b.

Thus, in summary and in view of the stipulation concerning the conviction for aggravated sexual assault, the issues for consideration in this Decision are, whether Mr. Henderickson has the requisite good character, honesty and integrity for licensure and whether he has rehabiliated himself from the adverse effects of his conviction, as permitted by N.J.S.A. 5:12-91b.

EVIDENCE

The Division's evidence consisted of the indictment returned against Henderickson by the Atlantic County Grand Jury on April 13, 1982 charging him with aggravated sexual assault, child abuse, and sexual assault, and the judgment of conviction entered following his retraxit plea and sentencing, the sentencing occurring September 3, 1982. At that time Henderickson was sentenced by Honorable Robert Neustadter, J.S.C. to probation for four years, of which six months was to be served in the Atlantic County Jail, with credit for one day served. Henderickson was also ordered to continue psychiatric therapy and after serving his jail sentence to enroll and complete drug and alcohol program. He was fined $1,000 and required to pay $100 to the Violent Crimes Compensation Board within the first year of probation. The second and third counts of the indictment were dismissed. In sentencing the respondent Judge Neustadter stated that

> "This is a difficult sentence because of the serious nature of the offense and possible serious consequences to the victim on the one hand and relatively clear prior record and decent background of the defendant on the other. It is felt that this sentence under all the circumstances comes closest to fair and equitable treatment of the defendant and the victim and his family, and society in general: and is required in the court's opinion for purposes of punishment, as a deterrent, for rehabiliation and so as not deprecate the seriousness of the offense."

Mr. Henderickson was required as part of normal process with respect to sentencings on sex offenses, to undergo evaluation at the Adult Diagnostic Treatment Center at Avenal. Although the administrative law judge was not

supplied with a copy of the report from Avenal, apparently, according to Henderickson's testimony, he was not found to be a repetitive sex offender and was therefore returned to the county jail, where he served five months and was released early, being given credit for good behavior. He then completed his probation, under going psychiatric treatment. In addition, according to the testimony of Mr. Henderickson and his wife Cynthia, he also attended alcohol drug counseling and group therapy sessions, attending Alanon, an alcoholics organization, and also meetings of an unnamed drug organization. Mrs. Henderickson testified that they had begun attending these meetings prior to Robert's arrest on the aggravated sex offense charge.

Robert W. Henderickson testified in his own behalf. He dropped out of high school following eleventh grade in 1978. Thereafter, he was involved in several encounters with the law in Egg Harbor Township and Pleasantville. These included charges on September 30, 1980 in Egg Harbor for attempting to steal cars or parts thereof at Bennett Chevrolet, for which he was charged with theft and tampering with a motor vehicle and fined $250. According to Henderickson he needs parts for his truck and this was the motivation for the theft. On January 9, 1981 he was involved in a fight over a woman at the Tilton Inn. He was charged with aggravated assault and convicted of simple assault, for which he was fined $250 and ordered to pay $260 restitution and $25 to the Violent Crimes Compensation Board. Thereafter, on November 3, 1981 he was convicted of criminal mischief in Pleasantville and fined $100. According to Henderickson, at the time he and some friends had come out of a bar and someone in the area had attempted to break into a Wilco store. The alarm bells went off and the police arrested Henderickson before he could leave the area. He contends he was not actually involved in the break-in, however he was convicted.

Henderickson testified concerning the circumstances which lead up to the sexual assault. In April of 1982 he was living with his parents. At the time he was dating both his high school sweetheart Cynthia, to whom he is now married, and also another woman, named Joan. Henderickson and Cynthia were friendly with another young couple who had a four year old child, T.A. On March 6, 1982 the child's parents had gone away for a week. Apparently the child T.A. was left in the custody of a grandfather but arrangements had also been made with the parents for the child to spend the weekend with Henderickson, who was very close with the child and often took him out riding and for play. According to Henderickson on the night of March 6, he and some friends had a party at T.A.'s house where he was

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staying with the child. Henderickson became drunk and started using marijuana. Later in the evening the child approached him asking for a drink. At the time Henderickson was sitting in a chair reading a Playboy magazine. He told the child to "kiss his penis." The child complied with this request. Henderickson described himself as pretty drunk at the time. He insisted that no force was involved and that the child willingly complied with his request.

When the parents of the child returned home a week or so later the child apparently told them what had happended. Henderickson was eventually arrested and ultimately pled guilty.

Mr. Henderickson explained that prior to this incident in 1982 he had been involved with extensive use of alcohol and drugs during high school and after he dropped out of school. He also was hanging around with a "bad crowd" and they drank heavily. He used speed and marijuana. Following his arrest, conviction and service of his jail term Henderickson stopped using any drugs and restricted his use of alcohol to an occasional beer when he and his wife go out for dinner. He does not abuse alcohol. SInce emerging from jail he has worked steadily, being employed for ten years at Dick Price Enterprises as a carpenter, building cabinets and other furniture, often for casino clients, and then, when Price closed down, working for 2 1/2 years with DCA, where he again built cabinets and other furniture for other casinos. When DCA closed be became employed at Bally's Casino Hotel, working there for several years beginning 1984 or 1985 as a house carpenter, he then transferred to Caesar's for a permanent position 1 1/2 years ago. He is still employed there at this time.

Henderickson married his girl friend from high school, Cynthia, in 1983. They have two children, 5 years and 2 years old. They presently live with Mr. Henderickson's parents, having sold their mobile home in order to enable them to save money for a permanent home. They have bought property in Egg Harbor Township and contracted for the construction of a house.

Henderickson denied that he had ever repeated the sexual activity with which he was involved with T.A. He also denied any sexual fantasies or ideation concerning sex with children either before or since the incident. The incident involving T.A. was essentially spontaneous, something which he insisted would not have occurred had he not been under the influence of alcohol or drugs at the time.

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Henderickson testified besides his own daughters he has contact with the children of friends on a regular basis. There have been no unusual incidents involving these children and he has no concern that he would ever repeat any activities such as occurred with T.A.

James J. Mahoney, III Assistant Business Agent for the Carpenters District Council and associated with Local 623, testified he is familiar with Henderickson through employment since late 1986 or early 1987. Henderickson had contacted the Union for work and ever since that time he has had an enviable track record, has shown himself to be reliable, conscious and quiet and never the subject of any complaints from employers. He is a member in good standing and a very skilled tradesmen, who also involves himself in some of the fundraising activities of the Union, notably for the Amercian Cancer Society.

William Dittus, a Carpenter Foreman and supervisor of Henderickson at Caesars Casino Hotel, testified that his employee is never late, has caused no problems, does what he is asked, and is a very highly trained individual who is probably his top shop man. He finds Henderickson to be honest and straight forward. When confronted with a question as to whether knowledge of Henderickson's involvement in the sexual offense would affect his attitude, the witness testified that he viewed Henderickson as he dealt with him as an employee and that he had never had any reason to doubt his honesty and integrity and would not change his opinion of him.

Robert M. Henderickson, Jr., Mr. Henderickson's father, testified that his son and daughter-in-law and grandchildren live with him at present while they a wait construction of their home. It was his suggestion that the family move in with him so as to allow them to save for a home. In addition, Mr. Henderickson has found his son to be a great help around the house, particularly in view of the senior Henderickson's present heart problems.

Mr. Henderickson testified that he has seen a great deal of improvement in his son's conduct and responsibility since his release from jail in 1983. Although he was well aware of son's drug and alcohol problems and run-ins with the law prior to his incarceration, since his release Mr. Henderickson has seen his son become a responsible individual, taking care of his family and performing his job. Prior to that

time Henderickson was opposed to regimentation and there were some difficult times.

Cynthia Henderickson, who is 25 years old and married to Mr. Henderickson since June 25, 1983, testified she has known her husband since she was 15 years old and in eighth grade. They dated on and off, occasionally going steady until they eventually married when she was 19. She was aware of his troubles with alcohol and drugs and his indictment and conviction. The parents of T.A. were very close friends of the family and it was very hard on both she and her husband to deal with both the breakup of that friendship and the events which caused it. After the incident Mr. Henderickson attitude toward life changed and he calmed down. The couple attended Alanon and drug therapy sessions with a group whose name she could not recall. They began to attend these prior to Mr. Hendericksons arrest. Since his release he has not been involved with the use of drugs and has had no problems whatsoever with alcohol.

On cross-examination Mrs. Henderickson was asked when she learned of the incident. She denied that T.A. had told her anything about the problem on the day after it occurred, when she came to the house to see Mr. Henderickson, who was then her boyfriend. There was evidence of drinking in the house when she arrived. The child told her nothing about the incident and she learned of it from T.A.' s parents after they came home and the child told them about the incident.

In addition to the testimony of witnesses, counsel for Henderickson presented a letter of September 14, 1989 from Harold Winn, M.D., a psychiatrist associated with the Family Service Association of Atlantic County. This letter reviews the history of Mr. Henderickson's problems with drugs and alcohol, as well as the sexual assault. Dr. Winn notes that he reviewed a report submitted by John F. McIney, Ph.D, dated July 12, 1982, which at that time indicated there was a need to extensive psychological intervention. According to Dr. Winn's report, Henderickson showed "some remorse for his action (sexual assault) but basically blames it completely on the use of alcohol and marijuana." The doctor notes objective observations

> He is quite and neat. He appears to be calm. His answers are rational and logical in nature. He talks about his past behavior in relatively calm and composed fashion but does not go into a great deal of detail. He appears to have accepted the idea that the behavior was a result of substance abuse and that he can stay away from these substances, there will be no repetition."

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In summary, Dr. Winn notes

> Robert W. Henderickson was convicted of abusing a four-year-old child. This action was an isolated incident in this life which was caused by use of excessive amounts of alcohol and marijuana. There is no indication that the behavior is part of compulsive repetitious need. Reports from the Adult Diagnostic Treatment Center in Avenel and psychologist have substantiated this conclusion.
>
> Since the time of the offense, his life has become more stable. He was able to give up marijuana completely. He still uses some beer. His life has been stablized both in the work place and in the home situation. There are no indications at this time that he very likely to commit another offense.

DISCUSSION

This case presents a contrasting picture of a young man who was leading a directionless, wild and irresponsible life following his dropping out of high school and a chastened, more mature and responsible man who, after emerging from jail following his conviction for a serious sexual offense, returned to society and has striven to act in a responsible, socially acceptable pattern of behavior. Although there can be no minimizing to any degree the seriousness of the criminal act and the potential for harm which it presented to the youth involved, there is no question but that on the record presented here Mr. Henderickson's life has changed dramatically and, supported by a obviously loving and stable family, he has gone on to live as a respected and well adjusted citizen for the six years since his release from jail.

Obviously, the sexual assault for which Mr. Henderickson was convicted is a most serious offense. It is an automatic disqualifier from licensure under N.J.S.A. 5:12-86c. The question that must answered is whether, based upon the evidence presented, it can be said that Henderickson demonstrated his rehabiliation by clear and convincing evidence. Based upon my consideration of the evidence, I **CONCLUDE** that he has.

Since his release from jail Mr. Henderickson has done everything society would normally expect from a good citizen. He has been a hard working, conscientious, responsible and valued employee for a succession of employers. He has transferred jobs only because of businesses going out of operation or because temporary employment at Bally's Casino ended. His present supervisor, as well as a responsible union official, have testified that he is an excellent employee and union member. In

addition, his wife and father have detailed his relationship with them and his children and his wife has clearly and earnestly expressed her complete trust in him as a father. It is apparent from the record that from every standpoint and from all information available Mr. Henderickson is not a likely candidate to ever repeat his prior sexual misconduct, which given all the circumstances, was undoubtably aberrational in character. The psychiatric analysis previously performed upon him at Avanel, as well as the report of Dr. Winn, confirm this.

Based upon the evidence, I **CONCLUDE** that Mr. Henderickson is disqualified from licensure, but I also **CONCLUDE** that he has rehabilitated himself. In addition, I **FIND** that he presently has the necessary good character honesty and integrity required for licensure. Despite a history of less than stellar conduct, capped by a most unfortunate and significantly serious problem, Mr. Henderickson has been able to correct his life style, and conform to the type of image which presumably is sought for employees under the strict controls of the Casino Control Act. For these reasons, it is **ORDERED** that the complaint against him be dismissed and that his application for licensure as a casino employee be approved.

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

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

October 17, 1989
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

10/18/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 23 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

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EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment 1018-81J-IMV

P-2 Judgment of Conviction and Order of Commitment, with attached sentence work sheet and Statement of Reasons for Sentence.

On behalf of respondent:

R-1 Letter of September 14, 1989 from Harold Winn, M.D.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-102
APPLICATION NO. 74079-22
OAL DOCKET NO. CCC 7948-88
ORDER NO. 89-36-11

APPLICATION OF MARK B. HILL

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 6, 1989,

IT IS on this 11th day of September 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7948-88

AGENCY DKT. NO. 89-EA-102

MARK B. HILL,

Petitioner,

v.

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

Respondent.

Joan Freedman Meyer, Esq., for the petitioner (Tomar, Seliger, Simonoff, Adourian and O'Brien, attorneys)

Charles F. Kimmel, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 14, 1989 Decided: July 20, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Mark B. Hill, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (non-gaming), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

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PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a window cleaner at Trump Plaza Hotel and Casino. By letter to the Commission, dated September 2, 1988, the Division objected to the petitioner's application for licensure as a window cleaner, asserting that the petitioner had committed the offense of attempt to distribute methamphetamine in violation of 21 U.S.C. §846 which is comparable to distribution of an imitation controlled dangerous substance in violation of N.J.S.A. 2C:35-11, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on October 5, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated October 13, 1988, which was received by the Commission on October 17, 1988, the petitioner requested a hearing. On October 24, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on November 1, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Edgar R. Holmes on March 17, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:35-11, distribution of an imitation controlled dangerous substance.

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

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on July 14, 1989, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On October 3, 1983, a confidential informant, Albert "Chant" Visco, contacted the Drug Enforcement Agency (DEA) Task Force and told them that the petitioner had given him one-eighth ounce of methamphetamine. He gave the substance to the DEA and it field tested positive for methamphetamine. The informant introduced an undercover DEA agent to the petitioner. The two entered into negotiations and the petitioner agreed to sell the agent one-half pound of drugs for $5,000. On October 7, 1983, the two met again. The officer showed the petitioner the money and then exchanged the money with the petitioner for what was represented to be methamphetamine. The drugs field tested positive for methamphetamine.

The drugs were subsequently tested in a laboratory. This analysis established that the drugs were not methamphetamine but phenyl-2-propanone (P2P). P2P is a related and similar drug to methamphetamine and at the time was not a controlled dangerous substance.[1]

The petitioner was arrested on October 11, 1983. The petitioner was indicted in the United States District Court for the Eastern District of Pennsylvania and was charged with two counts of attempting to distribute methamphetamine, a Schedule II non-narcotic controlled substance, in violation of 21 U.S.C. §846. On June 22, 1984, the petitioner entered a plea of guilty to both counts, and he was sentenced under the Youth Corrections Act. The imposition of a sentence to imprisonment was suspended on both counts, and the petitioner was placed on probation for four years on each count to be served concurrently. (R-2)

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1 P2P has since been classified as a controlled dangerous substance.

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A probation program plan (P-10) was prepared concerning the petitioner. The petitioner was required to submit biweekly urine samples for drug testing, to undergo weekly counseling, make monthly reports and maintain employment. The petitioner was very cooperative, had no positive drug tests, and participated in counseling. He is illiterate and worked extremely hard to maintain his employment. His probation officer received excellent reports from his supervisor.

Due to his excellent progress, on February 11, 1988, the petitioner was discharged from probation early (P-8, P-9). Also on that date, as the petitioner had been discharged from probation early, the court set aside his judgment of conviction pursuant to the provisions of 18 U.S.C. §5021(b) (the Youth Corrections Acts) (P-7).

The petitioner testified that he had known the informant Chant Visco for 20 years. The drugs were owned by Mr. Visco. Mr. Visco asked the petitioner to sell some "bad drugs" for him to someone (the DEA agent). Mr. Visco offered to give the petitioner $100 to sell the drugs for him as he did not want the person (agent) to know the drugs really belonged to him. The petitioner agreed and sold the drugs to the agent.

After his arrest, the petitioner entered a 45-day inpatient drug and alcohol rehabilitation program at Eaglesville. Upon successful completion of this program, he entered a halfway house for two weeks and then participated in regular Narcotics Annonymous meetings. He continued receiving weekly drug counseling throughout his probationary period, and he still occasionally attends meetings.

The petitioner moved to Atlantic City in April 1984. He obtained employment at the Trump Plaza as a houseman at $5.62 an hour. After one year, he was promoted to a houseman supervisor. He has since been promoted to the position of window cleaner and currently earns $9.18 per hour.

The petitioner was born on August 7, 1958, and he is nearly 31 years of age. He was 25 at the time of his arrest. The petitioner was raised in Philadelphia. He is the youngest of four brothers and two sisters. He completed school through the eighth grade, afterward, he dropped out of school in order to get a job.

In 1985, he met his current wife and they have a three-year old son Brandon. The petitioner's life centers around providing for and taking care of his family. The

petitioner works from 4 a.m. until noon. He must immediately return home as his wife begins her work in a supermarket at 1 p.m., and the petitioner must care for their son as they cannot afford a babysitter. His wife then attends school in the evenings where she is studying to become a paralegal. During the afternoon and evening, the petitioner cleans house, cooks, does laundry, and cares for their child.

The petitioner has not been in any trouble since his arrest, and he has only one prior juvenile arrest. He got in trouble when he was nine-years old for sniffing glue. The petitioner no longer drinks or uses drugs. He also no longer smokes cigarettes. The petitioner moved form Philadelphia to Ocean City in 1984 in order to get away from "bad influences."

In addition to caring for his family, the petitioner is also caring for his brother's step-daughter. She is a 15 year old who suffers for cerebral palsy. She is happy staying with the petitioner, and he is good to her.

In addition to presenting five witnesses, the petitioner submitted one letter in his behalf. Myron Spence, head window cleaner at Trump Plaza, in a letter dated May 5, 1989, wrote:

> Over the past two years, it has been my pleasure to work with Mark Hill at the Trump Plaza in the Environmental Services Department. During that time Mark has deported himself in a professional and courteous manner at all times. He is always willing to help out whenever needed and has never given me any disciplinary problems. In my opinion Mark Hill continues to conduct himself in a manner that exemplify the quality of employees that the Trump Organization has selected to surround themselves with. [P-1]

The petitioner also submitted two annual performance reviews and a work history record (P-2, 4 & 5). All rate his performance as very good. He is a positive reliable employee who interacts well with others.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However,

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

FINDINGS OF FACT

1. On October 7, 1983, the petitioner sold a quanitity of drugs which he represented to be methamphetamine to a DEA undercover agent for $5,000.

2. The drugs were in fact not methamphetamine but a related and similar drug, phenyl-2-propanone.

3. On June 22, 1984, the petitioner was convicted in Federal District Court of two counts of attempting to distribute methamphetamine in violation of 21 U.S.C. §846. The petitioner was placed on probation for four years.

4. The petitioner successfully completed his probationary period, was released early for exceptional progress, and as a result his judgment of conviction was set aside pursuant to the provisions of the Youth Corrections Act.

5. The petitioner successfully completed a inpatient drug rehabilitation program, a halfway house program, and participated in drug counseling throughout his probation.

6. The petitioner worked continuously in the casino industry at the Trump Plaza since April 15, 1984. He has been an excellent employee earning two promotions and several raises.

7. Since 1984, the petitioner has moved to Ocean City, married, and has a son. He is a devoted husband and father whose life centers around providing for and caring for his family.

8. The petitioner no longer uses drugs, drinks alcohol or smokes cigarettes.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . .
>
> N.J.S. 2C:35-11 (distribution, possession or manufacturer of imitation controlled dangerous substances);
>
> . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State;

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

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

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

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

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

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric

> treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:35-11, imitation controlled dangerous substance; distribution, possession, manufacture, etc.; penalties, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's sale for $5,000 of a quantity of phenyl-2-propanone, which he represented to be metamphetamines, to a DEA undercover agent constitutes a violation of N.J.S.A. 2C:35-11, which under the circumstances disqualifies the petitioner from licensure.

N.J.S.A. 2C:35-11, Immitation controlled dangerous substances; distribution, possession, manufacture, etc.; penalties, provides in pertinent part:

> a. It is unlawful for any person to distribute or to possess or have under his control with intent to distribute any substance which is not a controlled dangerous substance or controlled substance analog:
>
> (1) Upon the express or implied representation to the recipient that the substance is a controlled dangerous substance or controlled substance analog; or
>
> (2) Upon the express or implied representation to the recipient that the substance is of such nature, appearance or effect that the recipient will be able to distribute or use the substance as a controlled dangerous substance or controlled substance analog; or
>
> (3) Under circumstances which would lead a reasonable person to

> believe that the substance is a controlled dangerous substance or controlled substance analog.
>
> Any of the following shall constitute prima facie evidence of such circumstances;
>
> (a) The substance was packaged in a mannger normally used for the unlawful distribution of controlled dangerous substances or controlled substance analogs.
>
> (b) The distribution or attempted distribution of the substance was accompanied by an exchange of or demand for money or other thing as consideration for the substance, and the value of the consideration exceeded the reasonable value of the substance.
>
> (c) The physical appearance of the substance is substantially the same as that of a specific controlled dangerous substance or controlled substance analog.
>
> . . . .
>
> d. A violation of this section is a crime of the third degree, except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $100,000.00 may be imposed.

The Division established, and the petitioner admitted during his testimony, that he knowingly sold phenyl-2-propanol, a substance which was not a controlled dangerous substance at the time of the sale, to an undercover DEA agent for $5,000, and represented to the agent that the substance was in fact methamphetamine, a substance that was and is a controlled dangerous substance. The physical appearance of the substance is substantially the same as that of methamphetamine, and it was packaged in a manner normally used for the unlawful distribution of a controlled dangerous substance. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:35-11.

Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

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

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

2. The nature and seriousness of the offense or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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

First, Mr. Hill is a non-gaming casino employee and is employed as a window cleaner. As such, he does not have direct responsibilities for actual gaming activities and does not have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:35-11, on one occasion prior to his employment in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner appears to have been "set up" by an acquaintance who provided him the drugs and then arranged the sale with federal agents. The petitioner did, however, go through with the sale and the sale of any drugs in our society is an extremely serious offense.

Fourth, the petitioner's misconduct occurred in October 1983, when it ceased.

Fifth, the petitioner was 25 years old at the time of the offense. I do not believe immaturity was a factor in this case; however, at the time of the offense, the petitioner was unemployed and was using drugs. This clouded the petitioner's judgment.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws. He has only one prior juvenile infraction for sniffing glue when he was nine years old.

Seventh, the petitioner was the youngest of six children. He is illiterate and dropped out of school after the eigth grade. He began using drugs and was unemployed. An acquaintance offered him $100 to sell drugs for him to another person. Little did the petitioner know that the acquaintance was an informant and the other person was an undercover agent.

Eighth, the petitioner has made substantial rehabilitative efforts. He successfully completed an inpatient drug rehabilitation program, halfway house program, and participated in drug counseling throughout his probation. He no longer uses drugs, drinks alcohol or smokes cigarettes. He is now rehabilitated from his former drug use. He made excellent progress during probation, was discharged early for exceptional progress, and his conviction was set aside. The petitioner has been employed in the casino industry continuously since April 1984. His performance has been exemplary. He is a conscientious and reliable employee who has received two promotions and several raises. He has demonstrated that he has matured and has accepted responsibility. His home life has stabilized, and he has demonstrated his acceptance of responsibility. He is now married and has a son. He is a caring and devoted husband and father whose life centers around providing for and caring for his family. The petitioner has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish his rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Hill was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is rehabilitated and otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past five years, is married, has a son, and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Hill is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

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

(D) Federal Preemption

The petitioner's attorney argued that the Commission cannot look behind the set aside conviction to the underlying misconduct pursuant to section 86g as the state statute is preempted by the federal statute. The petitioner's attorney concedes that the Division is not attempting to use the set aside conviction as the basis for a statutory disqualifier pursuant to section 86c(1). She argues, however, that the intent behind the Youth Corrections Act was to give the youthful offender a "fresh start" and that since the conviction was set aside and the record of his arrest and conviction can be expunged under federal law, the Division and the Commission cannot look behind the set aside conviction to the underlying misconduct.

Pursuant to the Supremacy Clause of the United States Constitution, an exercise of federal power prevails over state action, so that state law or policy which conflicts with federal statutes or regulations must yield.

> Generally, the power of a state to govern men and things will not be lightly stricken down by implication, and an unexpressed purpose of Congress to set aside statutes of states regulating their internal affairs is not lightly to be inferred, and ought not to be applied where the legislative command, read in the light of its history, remains ambiguous. So the intention of Congress to exclude the states from exercising their reserved powers must be clearly manifested, and the courts will not lightly infer that Congress by mere passage of a federal act has impaired the traditional sovereignty of the states in that regard.
>
> Ordinarily, a federal statute must be presumed to be limited in effect to the federal jurisidiction and not to supersede an exercise by a state of its police power and while it has been held that state action may be excluded by clear implication or inconsistency as well as by express language, an intention wholly to exclude state action will not be implied unless, when fairly construed, the federal regulation on a subject is clearly in conflict with the state regulation on the same subject. If the claim is a conflict in terms, it must be clear that the federal provisions are inconcistent with those of the state in order to justify the thwarting of state regulation; the repugnance or conflict should be direct and positive so that the two acts cannot be reconciled or consistently stand together.

> Congress will be deemed to have intended to supersede local law when and only when the local law in terms or in its practical administration conflicts with the act of Congress, or plainly and palpably infriges its policy. The test of the validity of the state law is whether, under the circumstances of the particular case, such law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, and a state law will not be a considered in conflict with federal statutes if it does not impede the execution of the will and purpose of Congress.
>
> In other words, in determining whether state law has been superseded by federal law, the test is not whether a state law happens to block action which a federal agency may chance to approve, but whether the state law frustrates the operation of the federal law and prevents accomplishment of its purpose, and, if it does, only then must the state law yield. 81 A C.J.S. States §24 at 330-332

18 U.S.C. §5021(b) (repealed October 12, 1984), provided:

> Where a youthful offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youthful offender from probation prior to the expiration of the maximum period of probation thereto fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youthful offender a certificate to that effect.

In Mines v. National Transportation Safety Board, 862 F. 2d 617 (6th Cir. 1988) the court stated:

> We held in United States v. Fryer, 545 F. 2d 11 (6th Cir. 1976), that a conviction set aside under the YCA could not constitute a "conviction" for purposes of 18 U.S.C. App. s 1202(a) (illegal possession of firearms) and 18 U.S.C. s 922(a)(6) (making a false statement to a federally licensed seller of firearms in connection with the purchase of a firearm). We stated that the YCA, "by legislative design an expungement statute," is intended "to give the offender a second chance free from any record of conviction." 545 F. 2d at 13.[2] Upon a careful analysis of the

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2 At footnote 4, the court stated: The word "expungement" is not used consistently by the courts. In United States v. Fryer, 545 F. 2d (6th Cir. 1976), we used "expungement" to refer to an official act that eliminates a conviction from the defendant's record. In United States v. Doe, 556 F. 2 d 391 (6th Cir. 1977), we used the same word in a narrower sense to refer to the obliteration of the physical records themselves. In Doe, we held that the YCA is not an expungement statute in the narrow sense of providing for the actual destruction of the record of conviction. Here we are using the word in the sense it was used in Fryer. See United States v. Bush, 438 F. Supp. 839, 840 n. 1(E.D. Pa. 1977) (distinction between "expungement" (elimination of conviction from the defendant's record) and "expunction" (destruction of the physical records)).

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legislative history of the YCA, the District of Columbia Circuit came to the same conclusion in Doe v. Webster, 606 F. 2d 1226 (D.C. Cir. 1979), stating:

1[The drafters] primary concern was that rehabilitated youth offenders be spared the far more common and pervasive social stigma and loss of economic opportunity that in this society accompany the "ex-con" label. . . .[T]hey intended to give youthful ex-offenders a fresh start, free from the stain of a criminal conviction, and an opportunity to clean their slates to afford them a second chance, in terms of both jobs and standing in the community. Id. at 1234-35.

We are not persuaded by the respondent's suggestion that Fryer should be reconsidered in light of the Supreme Court's decision in Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 103 S. Ct. 986, 74 L.Ed.2d 845 (1983). In Dickerson, the Court held that firearms disabilities imposed by the Gun Control Act of 1968, 18 U.S.C. ss 921-928, applied to a person whose conviction was subsequently expunged under state law. The gun Control Act provides that it is unlawful for any person "who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a terms exceeding one year" to transport or receive firearms or ammunition in interstate commerce. Id. s 922(g), (h). The Court refused to construe the words of the statute ("any person ... who has been convicted") as providing for an exception for a person whose conviction has been expunged under state law. The statute construed by the Court in Dickerson was not the Youth Corrections Act, but rather, the Gun Control Act of 1968. Whether the Youth Corrections Act is a sentencing statute or an expungement statute was simply not before the Court. More to the point, the question of when the rehabilitative purpose of the YCA should yield to other regulatory schemes was not presented nor answered in Dickerson. Therefore, we conclude that the interpretation given the YCA in Fryer, that the effect of the YCA is to expunge a conviction from the defendant's record, controls the outcome of this case.

The NTSB contends that despite the rehabilitation purposes of the YCA and the effect of expungement under the Act, the public's interest in aviation safety demands that Mines' conviction be taken into account in considering his qualifications to be an air pilot. The premise of FAR §61.15(a) is that a person who has violated a drug statute demonstrates an unwillingness to abide by the regulations required for safety in air transportation. Respondent's Brief at 16. The animating principle of the Youth Corrections Act, however, is that a person who has violated the law and who qualifies for treatment under the Act is, notwithstanding a conviction, to be considered fully rehabilitated. That is to say, whatever negative inferences are normally drawn as to a person who has been convicted of a crime, those inferences are not to be drawn as to a person whom the sentencing judge has determined would benefit from being given a second chance and a

clean slate pursuant to the YCA. See Dorszynski v. United States, 418 U.S. 424, 431-35, 94 S. Ct. 3042, 3046-49, 41 L.Ed.2d 855 (1974); United States v. Arrington, 618 F. 2d 1119, 1124 (5th Cir. 1980) cert. denied, 449 U.S. 1086, 101 S. Ct. 876 66 L.Ed.2d 812 (1981); Doe v. Webster, 606 F. 2d 1226, 1234-41 (D.C. Cir. 1979); United States v. Doe, 556 F. 2d 391 392 (6th Cir. 1977).

Therefore, the assumption of the FAR at issue in Mines' case (that his prior conviction marks him as one who has demonstrated an unwillingness to conform to the law, and hence, a threat to aviation safety), is overcome by virtue of that conviction having been set aside pursuant to the YCA. See United States v. Pagan, 721 F.2d 24, 30 (d Cir. 1983) (because setting aside a conviction implies that the offender has been rehabilitated, admission of defendant's prior conviction, which had been set aside under YCA, for impeachment purposes was ground for ordering a new trial). In a similar case, the Ninth Circuit held that the FAA's regulations disqualifying all prior alcoholics from receiving a medical certificate and a pilot certificate were invalid under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1980, 42 U.S.C. s 290dd-1(b), which provides that no person may be denied a federal license solely on the ground of prior alcohol abuse. Jensen v. Administrator of Federal Aviation Administration, 641 F.2d 797 (9th Cir. 1981), vacated 680 F.2d 593 (9th Cir. 1982).

We recognize the grave danger that drugs pose to our socitey, particularly in terms of safety in transportation, but there is no provision in the YCA that limits the setting aside of a conviction on drug charges when aviation safety or other important policies are at issue. The dissent characterizes this case as a choice between aviation safety and rehabilitation of youthful offenders. There is, however, nothing in the YCA that allows us to choose whether to give effect to its terms.

We conclude that a conviction set aside under the Youth Corrections Act may not constitute a "conviction" for purposes of Federal Aviation Regulations s 61.15(a).

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

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

> At the very heart of the public embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions. . .are designed to extend strict State regulation to all persons. . .practices and associations related to" casinos and that 'comprehensive law-enforcement supervision. . .is further designed to contribute to the public confidence and trust in the efficancy and integrity of the regulatory process."

The casino industry is a highly regulated industry. The power of the state to regulate entry into this industry is part of the state's inherent police powers and will not be stricken down by implication that the Youth Corrections Act preempts the power of the state to look at the specific acts of the applicant.

Even if the Youth Corrections Act is held to be an expungement act, the Commission may still examine the underlying misconduct. A Florida appellate court decided the application of a state expungement statute to a commission revoking a license based upon the underlying misconduct. In Walton v. Turlington, 444 So. 2d 1082 (1984) the appellant, a teacher, entered a plea of nolo condendere to a charge of possession of marijuana. The record was sealed under Section 943.058. Subsequently, the Education Practices Commission revoked appellant's teaching certificate for three years because of the same conduct as that underlying the criminal charge.

Appellant asserted that pursuant to Section 943.058 the trial court had absolved him from the consequences of his past arrest and prosecution and that the appellee was not authorized to take account of the events associated with the arrest so as to find him guilty of gross immorality and strip him of his teaching certificate.

The court held that while expungement of the record placed appellant in the same position as if he had never been charged with the crime, this did not mean that he may not be held responsible for his actions in a non-criminal proceeding. "In sum, Section 943.058 merely seals appellant's criminal record, it does not expunge his 'criminal conduct'." Walton 444 So. 2d at 1084.

The court in Walton cited with approval McDowell v. Goldschmidt, 498 F. Supp. 598 (D. Conn. 1980). McDowell, an F.A.A. air traffic controller was convicted of possession of marijuana and was subsequently discharged by the F.A.A. He had his criminal record expunged and sought reinstatement to his position based upon the expungement. He alleged that the F.A.A. erred in accepting the record of his conviction as proof of the criminal conduct which formed the basis of the agency's decision.

The court disagreed, sayng, "It is significant that at the time the plaintiff was removed from his position, he had a public criminal record for possession of marijuana; his record was not (and could not be) sealed until September 1974, three months after he was discharged. . . .a conviction is a matter of public record unless and until it is sealed." McDowell, 498 F. Supp. at 606. The court stated that a conviction could not be retroactively undone by an expungement so as to result in a reversal of the F.A.A.'s action which occurred prior to the expungement.

Moreover, like the Florida court in Walton, the court in McDowell found that the F.A.A.'s cause for dismissing the appellant was his "criminal conduct" not the condition of the court records. "It is such misconduct, rather than the existence of a record of a judgment of conviction, with which the F.A.A. was properly concerned." McDowell 498 F. Supp. at 606.

Similarly, the Commission has issued a decision as to whether an adjudication of juvenile delinquency or acts committed while a juvenile can be used to establish a statutory disqualifier pursuant to section 86c(1), or section 86c(1) by means of section 86g, or as evidence with regard to good character, honesty and integrity pursuant to section 90h. In Walfredo Matos v. Division of Gaming Enforcement, OAL DKT. NO. CCC 3008-87 (Dec. 17, 1987), decided by the Commission (March 9, 1989), the Commission modified the Administrative Law Judge's decision:

> to reject the ALJ's conclusion that the facts underlying a juvenile adjudication cannot be considered in determining whether the applicant is disqualified under N.J.S.A. 5:12-86(g). This section of the Casino Control Act specifically includes as a basis for the disqualifying action the commission "of any act or acts which would constitute any offense under subsection c of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this state." Under section 86(g) the Commission considers the specific acts of the applicant, not the disposition of the juvenile proceedings, and determines whether such conduct is tantamount to a disqualifying offense listed in section 86(c)(1).

The ALJ also concluded that the acts of a juvenile could be considered by the Commission when determining the petitoner's good character, honesty and integrity pursuant to section 90h. This portion of the decision was adopted by the Commission. In light of this decision, the acts of a juvenile may be considered by the Commission when determining whether or not the petitioner has committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, and those same acts may also be considered by the Commission when determining whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

In light of the above, I **CONCLUDE** that the Commission is not preempted by the Federal Youth Corrections Act from considering, pursuant to section 86g, the specific acts of the petitioner, not the disposition of the criminal charges, and determine whether such conduct is tantamount to a disqualifying offense listed in section 86c(1).

DISPOSITION

It is **ORDERED** that the application of Mark B. Hill for the issuance of a casino employee license be **GRANTED.**

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

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

July 20, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 25, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of Myron Spence, lead window cleaner, Trump Plaza Hotel and Casino, dated May 5, 1989

P-2 Hourly Employee Performance Review, dated September 21, 1988

P-3 Not used

P-4 Employee Performance Appraisal, dated August 4, 1985

P-5 Employee Personal Information and Work History Record

P-6 Not used

P-7 Certificate of Vacation of Conviction, United States District Court for the Eastern District of Pennsylvania, dated February 11, 1988

P-8 Order of Discharge from Probation, United States District Court for the Eastern District of Pennsylvania, dated February 11, 1988

P-9 Letter of Lester F. Huff, U.S. Probation Officer, dated April 13, 1988

P-10 Probation Program Plan, dated September 12, 1984

For the Respondent:

R-1 Personal History Disclosure Form-2A, dated September 14, 1987

R-2 United States District Court for the Eastern District of Pennsylvania Judgment and Probation/Commitment Order, dated June 24, 1984

WITNESSES

For the Petitioner:

Michael G. Chonia, United States Probation Officer for the District of New Jersey

Mark B. Hill, the petitioner

Paul M. Mosetti, window cleaner, Trump Plaza Hotel and Casino

Laura Hill, petitioner's wife

Francis Hill, petitioner's mother

Cherylann D. Sosnowski, petitioner's sister

Kimberly Mulson, petitioner's step-niece

For the Respondent:

William R. Hausmann, Jr., United States Attorney's Office for the Eastern District of Pennsylvania

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-218
LICENSE NO. 48305-21
OAL DOCKET NO. CCC 896-89
ORDER NO. 89-41-26

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

Complainant,

v.

VALERIE L. HINSON,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 27th day of November 1989, ORDERED that the initial decision is modified as follows:

> We concur with and adopt the Administrative Law Judge's findings of disqualification and no good character, honesty or integrity. However, we reject that portion of the initial decision wherein the Administrative Law Judge recommends a revocation of the casino hotel employee registration of the respondent. Having made application prior to the 1981 amendment to N.J.S.A. 5:12-91, the respondent received a casino hotel employee license, and not a registration. The casino hotel employee license received by the respondent expired in September of 1980, and is now inactive. It is, therefore, unnecessary to revoke that credential. The Commission need only revoke the respondent's casino employee license.

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /ODP
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 896-89
AGENCY DKT. NO. 88-218

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
VALERIE L. HINSON,
Respondent.

James J. Armstrong, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Valerie L. Hinson, respondent, pro se

Record Closed: July 18, 1989 Decided: September 1, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on February 4, 1988, seeking revocation of the respondent's casino employee license and casino hotel employee registration. The basis of the Division's complaint is its allegation that the respondent committed the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, while working in a slot redemption booth at Harrah's Hotel and Casino on January 3, 1988. These are the issues:

1. With specific reference to the respondent's arrest on January 3, 1988, for theft by unlawful taking contrary to N.J.S.A. 2C:20-3, has the respondent committed an offense which would render her continued casino employee licensure and hotel employee registration inimical to the policy

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of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Does the respondent possess the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

On January 30, 1989, the Casino Control Commission received the respondent's request for a hearing concerning the Division's complaint. On February 6, 1989, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by telephone on April 11, 1989. At that time, the matter was scheduled to be heard on June 12, 1989. The hearing was held as scheduled at the Office of Administrative Law in Atlantic City, New Jersey. It was thereafter necessary for me to review the transcript in this matter and the record closed when the transcript was received on July 18, 1989.

FINDINGS OF FACT

The facts which are material to resolution of this matter are essentially undisputed. The respondent is a 30-year-old life-long resident of Atlantic City, New Jersey. She lives with her mother and eight-year-old child. The respondent holds casino employee license no. 48305-21 and casino hotel employee registration no. 01657-40. Until her termination on January 3, 1988, the respondent had been employed at Harrah's Hotel and Casino as a slot booth cashier since April 1984.

New Jersey State Police Trooper Brian Brady testified that he was contacted by Harrah's Surveillance Department on January 3, 1988, concerning an allegation that a slot booth cashier had been short-changing patrons. Trooper Brady reviewed video tapes of the respondent working in a redemption booth. During a period of about one hour, the respondent was observed to have shorted patrons on two occasions.

The respondent was escorted from the casino floor to the Division of Gaming Enforcement office. Trooper Brady testified that the respondent was extremely cooperative. She admitted her theft of money from patrons and she provided a written statement (Exhibit P-1). The respondent admitted that when she reset her change machine she was able to cheat customers out of some money. She further acknowledged that she cheated customers out of at least $250 during an eight-hour shift.

According to Trooper Brady's Investigation Report (Exhibit P-1), the respondent was first given her Miranda rights before being questioned. When the respondent was asked to empty her pockets, a $50 bill was found in her casino badge and two $100 bills and one $50 bill were found in a cigarette pack. A $50 bill, one $5 bill, and one $1 bill were in a small envelope marked "VAL $2.00 Tip." Trooper Brady reported that when he asked the respondent where the money came from, she stated, "I ain't gonna lie to ya, I shorted my customers." The respondent was told that she was under arrest for theft and was readvised of her Miranda rights. With her consent, her locker was searched and another $50.00 was found in her pocketbook (Exhibit P-1).

Trooper Brady's arrest report indicates that the respondent was charged with theft by unlawful taking in the fourth degree, contrary to N.J.S.A. 2C:20-3. The Atlantic County Grand Jury subsequently entered an indictment against the respondent for unlawful taking of the property of others, in the form of United States currency with a value of $406 (Exhibit P-2). It is undisputed that the respondent was admitted into the Pre-Trial Intervention Program. It was her testimony that she was required to report to a probation officer once a month. In addition, she performed social service by watching children in a school yard. The respondent was required to perform 30 hours of this service. She satisfactorily completed the requirements of the Pre-Trial Intervention Program and the indictment against her was dismissed.

Testifying at the hearing, the respondent was unable to explain why she had short-changed patrons. She said that it just happened and she is sorry for what she did. According to the petitioner, January 3, 1988 was the first day she had intentionally short-changed patrons. The first time it happened was actually a mistake, when the coin machine jammed. When the respondent waited on the next customer, she realized that there was still some of the last patron's money in the machine.

The respondent kept the money. She put it in her pocket where it was found when she was arrested. According to the respondent, she kept an approximate running total in her head of the amount she was taking. The respondent also acknowledged that she had previously received warnings from the casino for being short in her money totals. She recalled receiving a written warning once in the past for being $50 short. The respondent also recalled that she had once been suspended for a shortage. Nevertheless, the respondent asserted that she was not stealing money on the other days she came up short and she noted that all redemption cashiers have problems with shortages because they are dealing with so much change.

The respondent is presently employed as a cashier at the Shop Rite Supermarket in Ventnor, New Jersey. She recently took a training course for a high school equivalency diploma. The respondent also had some vocational training while in school. According to the respondent, she has no record of other arrests or of any convictions.

The respondent's mother, Thelma DeShields, testified on her daughter's behalf. She stated that her daughter knows she made a mistake and that she can again be a good and honest person. Ms. DeShields hopes that the respondent will be given a chance to prove herself.

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

CONCLUSIONS OF LAW

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

Pursuant to sections 90e, 91b, and 86c(2) of the Casino Control Act, the Commission may revoke the credential of any licensee or registrant who has been convicted of any offense which indicates that continued licensure or registration

would be inimical to the policy of the Casino Control Act and to casino operations. Under section 86g of the act, the credentials shall be revoked as the result of the commission of any such offense, even if the conduct of the licensee or registrant has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the respondent was indicted for the fourth degree offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. She satisfactorily completed a Pre-Trial Intervention Program and the indictment was dismissed. Nevertheless, the respondent has candidly admitted the unlawful conduct. Theft and related offenses constituting crimes of the second or third degree (N.J.S.A. 2C:20-1 et seq.) are automatic disqualifiers under section 86c(1) and 86g, even if not prosecuted. Because the respondent's theft involved an amount of at least $200, but not in excess of $500, her admitted conduct constitutes a crime of the fourth degree, pursuant to N.J.S.A. 2C:20-2b(3). I so **CONCLUDE**.

Does the respondent's commission of theft render her continued casino employee licensure and hotel employee registration inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(2) of the act? The Commission has held that the rehabilitation factors set forth in sections 90h and 91d of the act must be considered in any case involving a licensee or registrant under the act where section 86c(2) disqualification is at issue. Simply stated, the rehabilitation factors are an integral part of the inimicality analysis. In the Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License, Dkt. No. 87-CSI-10 (Comm. Decision September 1, 1988).

Sections 90h and 91d set forth eight factors which should be considered in determining whether rehabilitation has been affirmatively demonstrated. These include the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred, the date of the conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent is now 30 years old. Her offense was relatively recent, having occurred on January 3, 1988. It does not appear that immaturity played a factor in the respondent's conduct. Although the respondent had experienced shortages on other occasions, she was not previously charged with theft. She admitted to

intentionally short-changing patrons on only one day. The petitioner has no other record of arrests or convictions.

The respondent satisfactorily completed a Pre-Trial Intervention Program. She has found gainful employment outside of the casino industry. This is some indication that the respondent is capable of rehabilitation. However, her unlawful conduct touched directly on her duties as a licensed casino employee. There is no doubt that theft from a casino employer is a serious offense. The reason for this conduct remains unexplained.

Too little time has passed since the respondent's unlawful conduct to be assured that it was aberrational and not to be repeated. In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent's continued participation as a casino employee licensee and casino hotel employee registrant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has committed an offense which would indicate that her continued licensure and registration would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(2) and 86g of the Casino Control Act.

Pursuant to section 80a of the act, it is the affirmative responsibility of each licensee to establish by clear and convincing evidence her individual qualifications. Among these are good character, honesty and integrity, pursuant to sections 89b(2) and 90b of the act. The foregoing rehabilitation factors which have been considered in the analysis of "inimicality" are equally relevant in determining whether the respondent possesses the good character, honesty and integrity required for licensure. Having concluded that she has committed an offense which would render her continued licensure inimical to the policy of the Casino Control Act and to casino operations, I further **CONCLUDE** that the respondent has failed to establish her good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license and casino hotel employee registration of Valerie L. Hinson be **REVOKED**.

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

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

September 1, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/11/89
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 7 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 New Jersey Investigation Report, Consent to Search, Arrest Report, and Statement

P-2 Indictment

WITNESSES

For the petitioner:

Brian Brady

For the respondent:

Valerie L. Hinson
Thelma DeShields

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-361
APPLICATION NO. 4390-11
OAL DOCKET NO. CCC 2288-89
ORDER NO. 89-35-9

APPLICATION OF VICTORIA T. HOPKINS
FOR A CASINO KEY EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 30, 1989,

IT IS on this 19th day of September 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2288-89
AGENCY DKT. NO. 89-EA-361

VICTORIA T. HOPKINS,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Victoria T. Hopkins, the petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 10, 1989 Decided: July 21, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Victoria T. Hopkins, applied to the Casino Control Commission (Commission) for the issuance of a casino key employee license (purchasing manager), pursuant to N.J.S.A. 5:12-90. The respondent, the Division of Gaming Enforcement (Division), took no position regarding the issuance of the license, but raised questions regarding the petitioner's alleged lack of the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1).

New Jersey Is An Equal Opportunity Employer

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino key employee license, so that she could be employed as purchasing manager at the Trump Plaza Hotel and Casino. By letter to the Commission, dated February 17, 1989, the Division took no position regarding the petitioner's application for licensure as a purchasing manager. In the letter, the Division raised questions regarding the petitioner's licensure, asserting that the petitioner had unpaid debts and that she had defaulted on a student loan. Based upon these assertions, the Division raises questions regarding whether or not the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1). Based upon the report, the Commission notified the petitioner on March 14, 1989, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated March 21, 1989, and received by the Commission on March 22, 1989, the petitioner requested a hearing. On March 23, 1989, the Commission transmitted the matter to the Office of Administrative Law, where it was received on March 30, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

An expedited prehearing conference was held in the matter before me on June 22, 1989. The issue set forth at the prehearing conference to be resolved at the hearing was:

A. Whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to N.J.S.A. 5:12-89b(1).

A hearing was held on July 10, 1989, at the Main Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record closed.

THE FACTS

The Division is challenging the petitioner's financial stability, integrity and responsibility. The basis of this objection is the petitioner's allegedly poor personal financial record. The petitioner obtained a student loan for $1,500 from First Fidelity Bank in 1980. This loan was guaranteed by the New Jersey Higher Education Assistance

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Authority (NJHEAA). On June 14, 1984, the petitioner went into default on her loan. Since NJHEAA had guaranteed the loan, it paid First Fidelity Bank $1,613.82, a total that included principal and interest.

A payment schedule of $40. per month was established, with the first payment due on July 15, 1984. Between July 1984 and July 1987, the petitioner only made five payments on her student loan. On July 10, 1984, the petitioner paid NJHEAA $9.86, an amount that represents $5.89 principal and $3.97 interest. On June 4, 1985, the petitioner paid NJHEAA $205.81, an amount that represents $75.37 principal and $130.44 interest. On October 4, 1985, the petitioner paid NJHEAA $234.60, an amount that represents $188.50 principal and $46.10 interest. On July 10, 1986, the petitioner paid NJHEAA $275.46, an amount that represents $183 principal and $92.46 interest. A year later, on July 10, 1987, the petitioner paid NJHEAA $203.31, an amount that represents $98.82 principal and $104.49 interest (R-4).

On March 2, 1989, the petitioner borrowed $1,576.68 from the Trump Plaza Sunshine Fund in order to repay her NJHEAA student loan (P-1g). A check was issued on March 6, 1989, to the "N.J. Higher Education Assistance Authority on Behalf of Victoria Hopkins" by the Trump Plaza Hotel and Casino (P-1a). The petitioner is repaying the Trump Plaza loan through automatic payroll deductions of $31.53 per week for 50 consecutive pay periods (P-1g). On March 14, 1989, the petitioner paid NJHEAA $1736.97, an amount that represents $1,576.68 principal and $160.29 interest. The petitioner repaid NJHEAA a total of $2,128.26, an amount that represents $1,613.82 principal and $514.44 interest (R-4). By letter dated June 19, 1989, NJHEAA informed the petitioner that her obligation had been fully amortized and that she would be receiving a note as evidence of her payment in full (P-3).

The petitioner once had a casino key employee license. That key employee license was renewed by the Commission on September 24, 1985. In a letter dated September 26, 1985, the Commission advised the petitioner of its reservations concerning her licensure. The Commission referred to her outstanding NJHEAA loan and to the requirements of N.J.S.A. 5:12-89b(1) regarding financial stability, integrity and responsibility. The petitioner was further advised that the Commission could consider her "subsequent efforts to satisfy these obligations at the time it acts upon any future renewals or other future applications" (R-1).

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When the petitioner's casino key employee license next expired, she applied for a casino employee license. Division Investigator Daren O'Connor prepared an Investigative Summary Report on December 17, 1986, regarding the petitioner's application. In that report, Investigator O'Connor discussed the outstanding NJHEAA student loan, a charge-off with the First National State Bank of New Jersey, a charge-off with First Card Services, and a repossession account with Heritage Bank. With regard to the NJHEAA loan, the petitioner told Agent O'Connor that she had attended the Taylor Business Institute in Pomona, New Jersey, for six months in 1980, but that she did not graduate. She stated that she had not paid back the loan because she left the school; she also claimed that the program was terrible and that she had not even had an instructor. The petitioner stated that the school never should have been accredited. She stated that she did intend to start paying off the loan soon. The First National State Bank of New Jersey reported that the petitioner had obtained a $500 loan on March 2, 1981. The last payment recorded was made on December 1, 1983, and the petitioner had an outstanding balance of $211.28. This account was charged off by the bank. The petitioner told Agent O'Connor that she thought that this account had been paid off years before. Agent O'Connor told the petitioner of the letter updating her account and advised her to contact the bank to straighten out the matter. The petitioner's account with First Card Services is listed on the C.B.A. sheet as having been charged off with a balance of $2,141. The petitioner stated that this account was from her Mastercard. She stated that she had run up the bill when she was unemployed and unable to pay it. She stated she did intend to pay off the account. The petitioner's account with Heritage Bank was listed on the C.B.A. sheet as an auto repossession with a balance of $2,697. The petitioner stated that she had only missed one month's payment when they came to repossess the car. She stated that she has not been able to afford to pay it off but that she did intend to pay it off in the future (R-2).

All of the above information was reported to the Commission by the Division in its letter dated March 30, 1987. The Division did not object to the petitioner's licensure as a casino employee on the basis of that information. In fact, the Division recommended that the Commission grant the license (R-3). Ultimately, on April 8, 1987, the Commission did grant the petitioner's application for a casino employee license.

Agent Dominick Trivinia investigated the petitioner's latest application on behalf of the Division. He testified that the petitioner earned $6,000 in 1985 and collected approximately $5,100 in non-taxable unemployment insurance benefits, and that

she earned approximately $17,000 while employed in the casino industry in 1986. He also noted that petitioner earned $25,000 in 1987 and that she had gross earnings approaching $35,000 in 1988. Agent Trivinia had not reviewed the petitioner's 1988 Federal tax return, which had not yet been filed at the time of the report.

The petitioner lives in a two-story, moderately-priced, rented townhouse in Pleasantville. The home is not overly furnished, and it appears that the petitioner does not live beyond her means.

The petitioner had an outstanding Federal income tax liability of $388.42 for tax year 1985. On November 25, 1988, the petitioner entered into an installment agreement with the Internal Revenue Service (IRS). The petitioner agreed to pay the IRS $100 per month beginning on December 27, 1988 (P-1c), and she completely satisfied this debt in April 1989. The petitioner told the agent that she would pay off her student loan and the bank after she completed paying the IRS.

With regard to the reported debt to the First National State Bank of New Jersey, the petitioner produced a cancelled check dated August 9, 1984, in the amount of $221.68, reflecting a final payment on the balance of the loan owed to the bank (P-1b). The agent admitted that the petitioner had shown him the cancelled check; however, he made no mention of this payment on his report, and he reported the debt as still being outstanding because the C.B.A. report still listed the debt as outstanding.

On April 24, 1989, the petitioner entered into an installment repayment agreement with Pressler and Pressler on behalf of the First National Bank of Chicago (regarding the First Card Services Mastercard account). The petitioner is making payments of $80 per month and she is current in her payments (P-1d, P-1f, P-1g and P-7).

The petitioner moved to Atlantic City from Philadelphia in 1979. She was employed by Bally's Park Place as a clerk-typist. During her five and one-half years of employment, she advanced in the company to the position of buyer. She was terminated from her position in March 1985, ostensibly for attendance reasons; however, the petitioner attributes her termination to a personality conflict with her last supervisor. She remained unemployed until April 1986, when she became employed by Western Temporary Services at $5.50 per hour. On April 28, 1986, the petitioner became employed by Trump Plaza Hotel and Casino as a purchasing assistant. She advanced to the position

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of purchasing manager in September 1988; however, she has been returned to a buyer's position since her temporary key employee license has expired.

In her position as a purchasing agent, the petitioner was responsible for placing orders and obtaining the best price, quality and service for requisitioned items. She was responsible for negotiating the purchase of any item the casino/hotel needed. She is a very capable negotiator who performed well on behalf of the casino, and she actively preserved casino funds while obtaining the best price and product for the casino.

Based upon her excellent performance as a purchasing agent, the petitioner was selected over ten other people to be employed as the purchasing manager for the casino. As purchasing manager, the petitioner manages the purchasing department, oversees the purchasing agents and buyers, oversees and approves their purchases for all goods for the entire casino, and has signature authority up to $2,000 in order to authorize purchases for her department. She is responsible for approving all purchases for the casino up to $100,000. She has performed well on behalf of the casino, she is honest with respect to casino funds and, according to her supervisor, she is of the highest financial integrity.

The petitioner is committed to accepting her full financial responsibilities, and she states that she has dealt with them to the best of her ability. She is a single parent and the sole support for two teenage sons and one daughter. She has been their sole support for up to 17 years. During this period she has held low-income, no-income, and now moderate-income jobs. She has been a hardworking employee and has never been on welfare or other public assistance.

She has provided a monthly budget documenting her expenses (P-6). She asserts that the cost of living in the Atlantic City area is extremely high. She uses all of her income to take care of her family and provide for everyday needs such as rent, utilities, food, clothing and transportation. She asserts that "there just [has] not been any extra money to pay off [her] outstanding debts" (P-1).

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

employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony and the manner in which she participated in the proceedings, as well as from my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her credit problems and described in detail, experiencing great humiliation, the underlying circumstances. She was an excellent witness who appeared to be extremely sincere, honest and forthright. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

FINDINGS OF FACT

1. The petitioner obtained a student loan for $1,500 from First Fidelity Bank in 1980. This loan was guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On June 14, 1984, the petitioner went into default on her loan. The petitioner made sporadic payments on this debt over a five-year period.

2. A payment schedule of $40 per month was established, with the first payment due on July 15, 1984. Between July 1984 and July 1987, the petitioner only made five payments on her student loan.

3. On March 2, 1989, the petitioner borrowed $1,576.68 from the Trump Plaza Sunshine Fund in order to repay her NJHEAA student loan. The petitioner is repaying the Trump Plaza loan through automatic payroll deductions of $31.53 per week for 50 consecutive pay periods.

4. On March 14, 1989, the petitioner paid NJHEAA $1736.97, an amount that represents $1,576.68 principal and $160.29 interest. The petitioner repaid NJHEAA a total of $2,128.26, an amount that represents $1,613.82 principal and $514.44 interest, and her obligation is now paid in full.

5. The petitioner once had a casino key employee license. That key employee license was renewed by the Commission on September 24, 1985. In a letter dated September 26, 1985, the Commission advised the petitioner of its reservations concerning her licensure.

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6. When the petitioner's casino key employee license next expired, she applied for a casino employee license. All of the petitioner's financial information was reported to the Commission by the Division in its letter dated March 30, 1987. The Division did not object to the petitioner's licensure as a casino employee on the basis of that information. In fact, the Division recommended that the Commission grant the license. Ultimately, on April 8, 1987, the Commission did grant the petitioner's application for a casino employee license.

7. The petitioner earned $6,000 in 1985 and collected approximately $5,100 in non-taxable unemployment insurance benefits. She earned approximately $17,000 while employed in the casino industry in 1986, she earned $25,000 in 1987, and she had gross earnings approaching $35,000 in 1988. Agent Trivinia had not reviewed the petitioner's 1988 Federal tax return, which had not yet been filed at the time of the report.

8. The petitioner lives in a two-story, moderately-priced, rented townhouse in Pleasantville. The home is not overly furnished, and it appears that the petitioner does not live beyond her means.

9. The petitioner had an outstanding Federal income tax liability o $388.42 for tax year 1985. On November 25, 1988, the petitioner entered into an installment agreement with the Internal Revenue Service. The petitioner completely satisfied this debt in April 1989.

10. On August 9, 1984, the petitioner repaid the First National State Bank of New Jersey in the amount of $221.68, reflecting a final payment on the balance of the loan owed to the bank.

11. On April 24, 1989, the petitioner entered into an installment repayment agreement with Pressler and Pressler on behalf of the First National Bank of Chicago (regarding the First Card Services Mastercard account). The petitioner is making payments of $80 per month and is current in her payments.

12. The petitioner moved to Atlantic City from Philadelphia in 1979. She was employed by Bally's Park Place as a clerk-typist. During her five and one-half years of employment, she advanced in the company to the position of buyer. She was terminated from her position in March 1985.

13. She remained unemployed until April 1986, when she became employed by Western Temporary Services at $5.50 per hour.

14. On April 28, 1986, the petitioner became employed by Trump Plaza Hotel and Casino as a purchasing assistant. She advanced to the position of purchasing manager in September 1988; however, she has been returned to a buyer's position since her temporary key employee license has expired.

15. In her position as a purchasing agent, the petitioner was a very capable negotiator who performed well on behalf of the casino and actively preserved casino funds while obtaining the best price and product for the casino.

16. As a purchasing agent, the petitioner has performed well on behalf of the casino, she is honest with respect to casino funds and, according to her supervisor, she is of the highest financial integrity.

17. The petitioner is committed to accepting her full financial responsibilities.

18. She is a single parent and the sole support for two teenage sons and one daughter. She has been their sole support for up to 17 years.

APPLICABLE LAW

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

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

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> (1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

DISCUSSION

The Division contends that the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1).

N.J.S.A. 5:12-89b(1)

Under section 89b(1) for casino key employee licensure, Ms. Hopkins was required to establish, by clear and convincing evidence, her financial stability, integrity and responsibility. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that this standard encompasses all financial aspects of the applicant, the holding company and the other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual. Id at 250.

In Velasquez v. Division of Gaming Enforcement, OAL DKT, CCC 4251-87 (July 7, 1988), aff'd., Casino Control Comm. (September 23, 1988), Judge Law held that the petitioner's recent attempts to establish a payback schedule, although commendable, were "too recent to demonstrate his 'financial stability, integrity and responsibility.' " In In the Matter of the Application of Gilbert L. Smith as a Casino Employee, OAL DKT. CCC 2252-79 (November 8, 1979), mod., Casino Control Comm. (March 20, 1980), the Commission rejected the ALJ's finding of a lack of financial stability and stated:

> Although evidence of financial stability may also be probative of financial integrity, these concepts are not identical.

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> Central to the question of financial stability is the Applicant's 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, satisfied 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). [Final Commission Decision at 13-14]

The questions raised by the Division are not new. These debts were questioned by the Division when the petitioner renewed her first key employee license in 1985. The Commission raised concerns about the petitioner's financial responsibility in its letter dated September 26, 1985, when it decided to renew the petitioner's key employee license. The Division again reported all of the petitioner's debts to the Commission in its letter report dated March 30, 1987, with regard to the petitioner's application for a casino employee license.

In its letter report, the Division did not object to the petitioner's licensure on the basis that she lacked the requisite financial stability, integrity and responsibility. On the contrary, it recommended her licensure. After considering this information, the Commission did grant the petitioner's application for licensure on April 8, 1987. Less than two years later, on February 17, 1989, the Division took no position regarding the petitioner's application for key employee licensure and the Commission referred the matter for a hearing, based upon the same information it had considered in 1987.

The petitioner's financial situation has dramatically and steadily improved since 1985, and her debt situation has improved since the Commission last considered this case in 1987. The petitioner has fully satisfied an IRS obligation for delinquent taxes.

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matically made by payroll deductions. The debt to the First National State Bank of New Jersey was satisfied on August 9, 1984, and should not be reflected as a current debt. The petitioner has also entered into a repayment agreement regarding her First Card Services Mastercard debt: she makes monthly payments of $80. She has made payments for four months and she is current in making her payments.

In 1985, the petitioner was either unemployed or had low income. In 1986, she only earned $17,000, but she has since received nearly $20,000 in raises. She lives modestly and not beyond her means. She is the sole support for her family, which consists of two teenage sons and a daughter. Her primary concern has been to support her family, which she has done, and she has never received any form of public assistance. Due to her low income and family needs, she simply was not able to repay the debts sooner.

The petitioner has performed admirably in the casino industry since 1986. She has earned a promotion and has received at least two substantial raises. In her position as a purchasing agent, the petitioner was responsible for placing orders and obtaining the best price, quality and service for the item requisitioned. She was responsible for negotiating the purchase of any item the casino/hotel needed. She performed well on behalf of the casino, and she actively preserved casino funds while obtaining the best price and product for the casino.

Based upon her excellent performance as a purchasing agent, the petitioner was selected over ten other people to be employed as the purchasing manager for the casino. As purchasing manager, the petitioner manages the purchasing department, oversees the purchasing agents and buyers, oversees and approves their purchases for all goods for the entire casino, and has signature authority up to $2,000 in order to authorize purchases for her department. She is responsible for approving all purchases for the casino up to $100,000. She has performed well on behalf of the casino, she is honest with respect to casino funds and, according to her supervisor, she is of the highest financial integrity.

The petitioner is committed to accepting her full financial responsibilities. As soon as she began receiving a decent salary which enabled her to begin making repayments, she did. First she repaid the IRS, and then she began repaying her other

debts. She has been a hardworking single parent who has held low-income, no-income, and now moderate-income jobs. She has dealt with her financial obligations to the best of her ability. These attempts to reestablish her financial stability and integrity are indicative of the petitioner's effort to regain financial stability, an effort which, in turn, reflects positively upon the petitioner's financial integrity and responsibility.

Based upon the above, I **CONCLUDE** that the petitioner has established her present financial stability, integrity and responsibility and that she has established, by clear and convincing evidence, that she meets the statutory criteria of financial stability, integrity and responsibility for a casino key employee license under section 89b(1).

DISPOSITION

It is **ORDERED** that the application of Victoria T. Hopkins for the issuance of a casino key employee license be **GRANTED.**

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

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

July 21, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7/21/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 26, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Petitioner's letter to the Office of Administrative Law, dated June 20, 1989

P-1a Trump Plaza Sunshine Fund loan disbursement to N.J. Higher Education Assistance Authority, dated March 6, 1989

P-1b Check to Ronald M. MacFarland, dated August 9, 1984, as payment in full for National State Bank debt

P-1c Internal Revenue Service Installment Agreement, dated November 25, 1988

P-1d Letter to Fred Robinson of Pressler and Pressler, dated April 25, 1989, re: repayment schedule to First National Bank of Chicago for First Card Services Mastercard debt

P-1e Pressler and Pressler summary of indebtedness, dated May 17, 1989

P-1f Check to First National Bank of Chicago, dated May 5, 1989

P-1g Trump Plaza Sunshine Fund Loan Agreement, dated March 2, 1989

P-1h Letter of E. Thomas Ellson

P-2 Birth certificate

P-3 New Jersey Higher Education Assistance Authority letter, dated June 19, 1989, indicating payment in full

P-4 Letter to Credit Bureau Associates, dated July 7, 1989

P-5 Not in evidence

P-6 Itemization of expenses with supporting documentation

P-7 Check to First National Bank of Chicago, dated June 30, 1989

For the Respondent:

R-1 Casino Control Commission letter, dated September 26, 1985

R-2 Division Investigative Summary Report, dated December 17, 1986, re: casino employee license

R-3 Division's letter report, dated March 30, 1987, re: casino employee license

R-4 Status report on student loan, dated June 19, 1989, indicating status paid in full

R-5 Not in evidence

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WITNESSES

For the Petitioner:

J. Joe Haase, director of materials management, Trump Plaza Hotel and Casino

Victoria T. Hopkins, the petitioner

For the Respondent:

Dominick Trivinia, investigator, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-85
LICENSE NO. 01105-11
OAL DOCKET NO. CCC 7549-88
ORDER NO. 89-46-15

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

Complainant,

v.

WILLARD C. "BUCKY" HOWARD,

Respondent.

ORDER

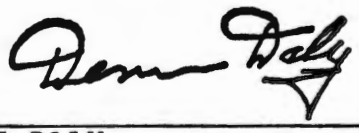
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and exceptions and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 22, 1989,

IT IS on this 1st day of December 1989, ORDERED that the initial decision be modified in accordance with Chair Read's remarks on the record of the Commission's public meeting of November 22, 1989, specifically addressing and evaluating the taped conversations between Jerome Palma and the respondent on May 29, 1987, and Palma and Peter Chan on June 5, 1987, and the testimony of Debra French; and

ORDER NO. 89-46-15

IT IS FURTHER ORDERED that the complaint be dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7549-88
AGENCY DKT. NO. 88-85

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
WILLARD C. "BUCKY" HOWARD,
Respondent

Mitchell A. Schwefel, Assistant Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney; **Anthony J. Parrillo**, Executive Assistant Attorney General, of counsel; **Gary A. Ehrlich**, Deputy Attorney General; Mitchell A. Schwefel on the brief)

G. Michael Brown, Esq., and Guy S. Michael, Esq., for respondent (Brown and Michael, attorneys; Guy S. Michael, of counsel on the brief; Grace Bruther, Legal Assistant on the brief)

Record Closed: July 19, 1989 Decided: August 29, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that respondent, Willard "Bucky" Howard, committed acts involving commercial bribery which constitute mandatory grounds for disqualification from casino key employee

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licensure pursuant to N.J.S.A. 5:12-86c(1), 86g and 89d, or would negate the requisite good character, honesty and integrity required as a condition for casino key employee licensure pursuant to N.J.S.A. 5:12-89b(2).

PROCEDURAL HISTORY

On September 28, 1987, the Division filed a three count complaint with the Casino Control Commission (Commission) seeking the revocation of respondent's casino key employee license. On October 14, 1987, the Division amended its complaint to include Count Four. On October 28, 1987, respondent's license was suspended by the Commission pending the resolution of an indictment handed up by a New Jersey State Grand Jury against respondent.

On September 29, 1988, following a trial by jury, respondent was acquitted of all charges contained in the indictment. On October 13, 1988, respondent's license suspension was vacated. On October 17, 1988, the matter was transmitted from the Commission to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The hearing was held on February 10, 14, 15, and May 1, 2, 3 and 4, 1989. The parties requested and were granted leave to submit posthearing briefs. The last of these was received by the undersigned on July 19, 1989, which constitutes the record close date in this matter.

ISSUES

The issues to be determined, as agreed to by the parties at the prehearing conference, are as follows:

1. **Whether respondent's conduct with respect to American International Airways (AIA); i.e., the alleged taking of money, if proved, constitutes a lack of good character, honesty and integrity as required by Section 89b(2) of the Casino Control Act (Act)?**

2. **Whether respondent's conduct with respect to Peter C.M. Chan, a sole owner and operator of a junket enterprise; i.e., the alleged taking of money, if proved, constitutes a lack of good character, honesty and integrity as required by Section 89b(2) of the Act?**

3. Whether respondent's alleged taking of monies is an offense of commercial bribery, pursuant to N.J.S.A. 2C:21-10 and, thus, disqualifies him from holding a casino key license pursuant to the provisions of Sections 86c(1), 86g and 89(d) of the Act?

4. Whether respondent has committed acts which would constitute crimes of conspiracy and misconduct by a corporate official, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 2C:21-9c and, thus, disqualify him from casino key employee licensure pursuant to Sections 86c(1), 86g and 89(d) of the Act/

5. Whether respondent breached his duty to provide assistance and information as required by the Division in that he supplied misleading and untrue information and, thus, is disqualified from possessing a casino key employee license pursuant to the provisions of Sections 80d, 80g and 86a of the Act?

UNDISPUTED FACTS

Having conducted a careful review of the entire record in this matter, and having given fair weight thereto; the following facts are neither contested nor disputed and, therefore, are adopted as **FINDINGS OF FACT**:

Jerome Palma is an admitted perjurer.

Jerome Palma is an admitted bribe taker.

Jerome Palma has accused and implicated respondent in his admitted commercial bribe schemes.

Jerome Palma has been granted statutory immunity from prosecution by the State of New Jersey for any criminal offenses to which his testimony related in these proceedings (R-1).

Prior to his arrival in Atlantic City in or about 1979, Palma was engaged in the casino industry in Las Vegas, Nevada. He served as a junket representative for the Flamingo and Las Vegas Hiltons as well as an outside vendor during the years 1976 through 1978. While in Las Vegas, Palma became acquainted with Mr. Gayle Monayahan, who operated a ground transportation company and serviced Palma's

junkets. Palma's business relationship with the Las Vegas Flamingo was interrupted as a result of a forged letter of credit.

Thereafter, Palma moved to Atlantic City where he was employed by the then Brighton Casino Hotel at the end of 1979 in the position of Executive Casino Host. Palma's duties at the Brighton included, among other things, organizing patron bus programs for the casino which was to open in 1980. Gayle Monayahan had also moved from Las Vegas to Atlantic City and was now working for a bus company doing business as TRAVCO. Palma provided Monayahan with assistance in sending super buses to the Brighton. Palma admits to taking bribes from Monahayan for each of the super buses which arrived at the Brighton. Palma also admits to receiving bribe payments from Joseph Millman, another bus operator. Palma needed no one's authority to take money from Monahayan and Millman.

In or about April 1981, Palma was employed by the Tropicana Casino Hotel as a credit executive. From the very beginning of his employment with Tropicana, Palma made every effort to secure a position in the casino's marketing department. In or about October 1982, respondent was employed by the Tropicana as its Vice President of Operations. In or about December 1982, respondent appointed Palma, who had made application, to the position of Director of Casino Marketing. Respondent did not know Palma prior to respondent's employment by Tropicana.

Prior to respondent's appointment as Vice President of Operations at Tropicana, the American International Airways (AIA) had two arrangements with the Tropicana Casino. One such arrangement concerned a written contract executed October 8, 1982, which provided for an aircraft charter service to the Tropicana via the Atlantic City Airport at Pomona, New Jersey or Bader Field at Atlantic City. This arrangement between the Tropicana and AIA was known as the DASH program. The other program was for AIA to fly junkets into Atlantic City for the Tropicana, utilizing DC-9 aircraft on an individual basis. Mr. Gayle Monahayan was then employed by AIA.

Subsequent to Palma's appointment as Director of Casino Marketing at the Tropicana, Palma met with Monahayan at Monahayan's office on Pacific Avenue, Atlantic City for the purpose of Monahayan offering to pay Palma $500 for each DC-9 aircraft brought in with patrons for the Tropicana. Palma accepted the bribe. The

bribe payments were made to Palma by Monahayan, Arthur Toll, Steven Homic and Norma Thompson during 1982, 1983 and part of 1984. Palma also engaged in other schemes with AIA whereby he took bribes for the DASH program and for hotel rooms reserved by AIA at the Deauville Hotel. The total amount of bribes paid by AIA to Palma exceeded $100,000.

While employed by the Tropicana between October 1982 and April 1984, respondent had no personal contact with any representatives of AIA. Respondent was introduced to Monahayen at the Trump Castle Casino Hotel in 1986 and met and saw Norma Thompson for the first time in 1988. Respondent was introduced to Arthur Toll, Chairman of AIA, on the casino floor of the Tropicana. Respondent had no other contact with these individuals.

In April 1984, respondent left the employ of the Tropicana to assume the position of Vice President of Casino Operation with the Atlantic City Hilton organization, prior to its opening as a casino-hotel. In the capacity of Vice President of Casino Operation, respondent was involved in the hiring of employees, several of whom were key employees who had worked under respondent's supervision at the Tropicana. At least five such employees, including Palma, left the Tropicana for similar positions at the Hilton; i.e., Director of Credit, Director of Casino Administration, Assistant Director of Marketing and, Director of Marketing; the later of which was Palma's respective positions.

Prior to the Hilton's opening for operation as a casino hotel, respondent met with Mr. Peter Chan of New York City in the presence of Palma in respondent's business office. Mr. Chan, who was formerly employed by the Tropicana, proposed to run a bus program out of New York Chinatown to the Hilton subsequent to its opening. After Chan's presentation, Palma left respondent's office with Chan while respondent remained behind in his office. Palma walked out with Chan to the parking lot where Chan offered Palma payment of $150 for each bus that was permitted to arrive with patrons at the Hilton. Palma accepted the offer and subsequently recommended that the Chan proposal be approved. Both respondent and Palma testified that no bribe offers were made by Chan while Chan was in respondent's office making the presentation to respondent concerning the New York City Chinatown bus program.

Palma entered into other bribe and kickback schemes with Chan subsequent to the Hilton property becoming the Trump Castle Casino Hotel. These included night bus programs from Chinatown, the purchase of briefcases for "high rollers" at Trump Castle, and Oriental stage productions to be performed at the casino hotel. Palma was instrumental in negotiating contracts between Trump Castle and Chan for these activities which resulted in payments to Palma by Chan. The concept of gift briefcases for the casino's high rollers was that of Palma and Chan. Palma presented the concept to respondent and, subsequent to Trump Castle purchasing department advertising for bids on the briefcases, the bid was approved by respondent and awarded to Chan. Palma also negotiated a contract for the Oriental shows with Chan which was approved by Mrs. Ivana Trump, an officer in the Trump Castle organization. Chan also provided Palma with hotel rooms and prostitutes when Palma visited New York City to collect his bribe payments from Chan. Chan gave Palma a gold wristwatch. In addition, Chan made payments to Palma of approximately 10 percent of the cost of each ticket purchased by the Trump Castle for Oriental productions Chan staged at other casinos in Atlantic City. The cumulative amount of bribes paid by Chan, to which Palma admits, approximated $125,000.

During the period respondent was employed by the Tropicana and the Trump Castle, he was going through divorce proceedings and had difficulty meeting his financial obligations. During his short tenure with the Atlantic City Hilton organization, and as a condition of his employment, respondent was provided the opportunity to purchase Hilton stock options. Respondent did not have sufficient resources on his own to purchase the Hilton stock options. Therefore, respondent requested that Palma offer certain certificates of deposit (C.D.) in Palma's bank as collateral for a bank loan to respondent. Palma agreed to the arrangement whereby respondent secured the bank loan and, together with cash respondent had on hand, respondent purchased the offered Hilton stock options. Respondent subsequently satisfied the loan at Palma's bank.

Respondent and Palma had a close working relationship at the Tropicana and Trump Castle where Palma was supervised by respondent. In his capacity as Director of Marketing, Palma was placed in the position of speaking with respondent several times per day. Respondent was involved in discussions with Palma which lead to the renewal of contracts with AIA with respect to the DASH and DC-9 aircraft programs

for the Tropicana. Respondent also recommended approval to the Tropicana's Executive Committed for the arrangement of rooms at the Deauville Hotel for AIA. Respondent recommended acceptance of Chan's daytime bus proposal to his superiors at the Hilton (later the Trump Castle) and the subsequent night bus programs as suggested by Palma. Respondent approved the purchase of briefcases from Chan for high rollers at Trump Castle. The contract between Trump Castle and Peter Chan for the Oriental stage production was executed by Ivana Trump as recommended by Palma. Respondent played no role in these contract negotiations or its execution other than to agree that the stage production would benefit the Trump Castle during its slow Christmas period. Respondent did, however, approve the purchase of tickets for Oriental productions staged by Chan at other casinos in Atlantic City. These tickets were given to Oriental high roller patrons at the Trump Castle. Palma received kickbacks from Chan for these performances which ran from January 1986 to the fall of 1986.

In or about October 1986, Palma was made aware that he was the subject of an investigation by the New Jersey State Police (N.J.S.P.) based upon allegations made by AIA representative Norma Thompson. Sergeant Kisby, N.J.S.P. assigned to the Division, interviewed Palma at Trump Castle. Palma subsequently discussed the allegations with respondent and denied that there was any truth to the allegations. Respondent advised Palma to go to Trump Castle's legal department to discuss the allegations with its corporate counsel. Palma did so and thereafter retained legal counsel in his own behalf.

On or about January 12, 1987, Palma was required to submit to a sworn deposition by the Division. Palma, represented by legal counsel, was sworn and placed under oath to tell the truth at the deposition. Palma lied at the deposition, denying that he took bribes from Norma Thompson, AIA or anyone. Palma, at this hearing, admitted to lying under oath and of committing perjury.

Subsequently, the Division filed a complaint against Palma with the Commission seeking to revoke Palma's casino key employee license. In or about April 10, 1987, Palma's license was suspended by the Commission. During the period of time Palma was being investigated by the Division and the Commission's license revocation proceedings, Palma was still in receipt of bribe money from Peter Chan. It

was also during this period, when Palma denied all allegations against him, that respondent loaned Palma money for Palma's legal defense.

On May 22, 1987, Palma was granted full protection of the statutory immunity provision of N.J.S.A. 2A:81-17.3 (R-1). Thereafter, on May 29, 1987, Palma arranged to meet with respondent while Palma had a Nagra tape recorder concealed on his person. The Nagra tape recorder was supplied to Palma by the N.J.S.P. assigned to the Division. During the course of the taped conversation between Palma and respondent, which occurred at the Absecon Diner, the parking lot of the diner and in respondent's automobile, respondent discovered that their conversation was being taped by Palma. Respondent stopped his car and had Palma exit it in Absecon. Respondent immediately drove to his attorney's office to have his attorney arrange for an interview with the N.J.S.P. concerning Palma and Palma's admission to taking bribe money. Respondent's attorney made the arrangement with the N.J.S.P. Respondent appeared before the N.J.S.P. and waived his constitutional Fifth Amendment rights against self-incrimination and answered all questions put to him by representatives of the N.J.S.P.

On June 6, 1987, Palma met with Peter Chan at the St. Moritz Hotel in New York City at which Palma had a tape recording device concealed in a briefcase. While Palma engaged Chan in conversation, Chan paid over to Palma a bribe payment for previously arranged patron bus trips from New York Chinatown to Trump Castle in Atlantic City. In his taped conversations with respondent and Chan, Palma attempted to implicate respondent with Palma's bribe taking and receiving of kickbacks from AIA and Chan.

Respondent was indicted by a Grand Jury of the State of New Jersey based, in ior part, upon the testimony of Jerome Palma. Subsequent to a trial by jury, ondent was acquitted of all charges brought against him by the State.

Immediately subsequent to his indictment by the State Grand Jury, the Commission took action to suspend respondent's casino key employee license. Upon his acquittal of the criminal charges, respondent's license was restored to him by action of the Commission upon respondent's application.

DISPUTED FACTS

Respondent denies he had any knowledge of Palma accepting bribes and kickbacks from vendors while Palma was employed and under respondent's supervision in the casino industry. Respondent denies that he participated, in any fashion, with Palma's bribery and kickback schemes by taking money and/or gifts from Palma which represented portions of the transactions. Respondent denies knowing or having any substantial contact with the principals of AIA from whom Palma was extracting bribes and kickbacks.

The Division asserts, among other things, that Palma's testimony as to the events of his bribe taking and of sharing the bribe money with respondent is believable and credible. It contends that respondent had both the motive and opportunity to commit the acts of bribery and conspired with Palma to do so. The Division does not rely solely on Palma's testimony to support its contention of respondent's guilt. Rather, it cites Palma's surreptitious tape recordings of respondent and Peter Chan's conversations with Palma as incriminating evidence to bolster its charge. Here, the Division devotes a considerable portion of its brief to analyze the tape recorded statements of respondent and Palma and Palma and Chan in its attempt to show respondent's culpability. It concedes that while there is no direct evidence to show that respondent was engaged with Palma to take bribes and kickbacks from vendors AIA and Peter Chan, it contends that the circumstantial evidence on this record is sufficient to meet its burden of proof and demonstrate that respondent committed the acts of conspiracy and commercial bribery as alleged in its complaint.

A SUMMARY OF THE LEGAL ARGUMENTS OF THE PARTIES

The Division's Position

In its legal arguments, the Division observes that under the Casino Control Act, the commission of acts constituting the crimes of conspiracy (N.J.S.A. 2C:5-2(a)), commercial bribery (N.J.S.A. 2C:21-10), or misconduct by a corporate official in the second or third degree (N.J.S.A. 2C:21-9) gives rise to the mandatory revocation of

the license of a casino key employee, pursuant to N.J.S.A. 5:12-86c(1), N.J.S.A. 5:12-86g and N.J.S.A. 5:12-89d.

The Division argues, among other things, that pursuant to N.J.S.A. 2C:21-10, the statute establishing the crimes of commercial bribery and breach of duty to act disinterestedly, it is no defense that one who accepted the benefit did not actually take any action contrary to the interest of the entity to which the participant owed a duty of fidelity. Nor is it a defense that such entity did not sustain any monetary loss as a consequence of the participant's acceptance of the benefit. The gist of the crime of commercial bribery is a breach of a duty of fidelity; i.e., a duty to select vendors of one's employer without consideration of personal gain. It cites the Commentary to the New Jersey Penal Code, N.J.S.A. 2C:21-10 at 245 where it states: "In principle, all relations which are recognized in a society as involving special trust should be kept secure from the corrupting influence of bribery."

The Division contends it has demonstrated that respondent conspired with Palma and that he solicited, accepted or agreed to accept money from AIA and Peter Chan through Palma as consideration for violating a duty of fidelity to which respondent was subject as an officer, manager or other participant in the direction of the affairs of the Tropicana and Trump Castle casinos, all in violation of N.J.S.A. 2C:5-2, N.J.S.A. 2C:21-9c and N.J.S.A. 2C:21-10. It uses the amounts of the bribes to which Palma admitted receiving; i.e., $100,000 from AIA and $125,000 from Chan, as the basis for its assertion that respondent committed the alleged acts of conspiracy, misconduct by a corporate official and commercial bribery in the second or third degree. It asserts, at page 58 of its brief, that respondent "probably" derived benefit of these amounts in excess of $75,000 and most definitely in excess of $1,000. N.J.S.A. 2C:21-10 provides at subsection d. that the offense is a crime of the second degree if the amount is $75,000 or more and a crime of the third degree if the benefit is $1,000 or more.

The Division contends that respondent's participation in these crimes provides a mandatory basis for the revocation of respondent's casino key employee license. In support of that proposition, the Division asserts that respondent's criminal acts per se also negate his possession of the good character, honesty and integrity required of a casino key employee license pursuant to N.J.S.A. 5:12-89b(2).

The Division contends that if this tribunal finds that respondent accepted any money from AIA then it must necessarily find that respondent breached his duty to provide assistance and information. The Division maintains that respondent supplied misleading and untrue information in a sworn interview conducted by it and, thus, respondent is disqualified from possessing a casino key employee license, pursuant to the provisions of N.J.S.A. 5:12-80d, N.J.S.A. 5:12-80g, N.J.S.A. 5:12-86b and N.J.S.A. 5:12-89d. The Division suggests that this tribunal may also find that respondent committed the disqualifying offenses of perjury and/or false swearing before the State Grand Jury, at his criminal trial and before this administrative tribunal when respondent denied any wrongdoing before all of those separate forums. N.J.S.A. 2C:28-1 and N.J.S.A. 2C:28-2.

The Division observes that respondent has the burden of affirmatively establishing proof of his good character, honesty and integrity by the standard of clear and convincing evidence. It cites the Commissioner's decision in In re Resorts Casino Application, 10 N.J.A.R. 244 at 252 where it said:

> ...An applicant will be denied a casino license based on a Section 86 disqualification only if the credible proofs in the whole record indicate the existence of the disqualification by a preponderance of the evidence. It, however, the credible proofs in the whole record fail to indicate the existence of a disqualification by a preponderance of the evidence, those proofs may nonetheless be considered as to whether the applicant has established by clear and convincing evidence the three affirmative qualification criteria discussed above.

In this context, the Division directs this tribunal's attention to respondent's explanation for respondent's incriminating conduct and actions during his taped conversation with Palma on May 29, 1987. The Division properly observes that respondent need not prove his non-participation in a crime per se. It contends that he must, however, as a part of his affirmative burden, provide clear, credible and convincing explanations for the incriminating evidence against him. In the event respondent is unable to establish his good character, honesty and integrity by clear and convincing evidence, the revocation of his casino key employee license is mandated by the Act under N.J.S.A. 5:12-86a and N.J.S.A. 5:12-89d.

The Respondent's Position

A. Burden of Proof

Respondent asserts that the starting point for an analysis of the record in this matter must focus on the respective burdens of proof which rests with each party. A record of facts is not analyzed in a vacuum. Rather, it is studied with constant attention to the balance which must be struck by the relative merits of the proofs on each side. The Prehearing Order provides:

> "The Division has the burden of proving the elements of any alleged statutory disqualifier and/or that respondent failed to disclose information as required, by a preponderance of the credible evidence."

The Prehearing Order also provides that:

> "Respondent has the burden of affirmatively establishing proof of his good character, honesty and integrity by clear and convincing evidence."

Respondent asserts that it is appropriate to begin the general review of the legal considerations attendant to the first of the standards - the Division's burden of proof.

Respondent observes that the Division's complaint against respondent seeks to revoke his casino key employee license. Respondent holds that license because of previous determinations made by the Commission confirming that respondent had met the standards necessary for such a status, particularly good character, honesty and integrity. N.J.S.A. 5:12-89b(2). It is well recognized that the Act declares licensure to be a privilege "solely conditioned upon the individual qualifications of the persons seeking the privilege." N.J.S.A. 5:12-1b(2)8. Nevertheless, it must also be recognized that under circumstances in which a person holds that privilege after having been found qualified, the revocation of that privilege must rest on a record which demonstrates a change in circumstances warranting a change in that determination. In this case, the Division alleges that incidents which give rise to a mandatory disqualification from licensure pursuant to N.J.S.A. 5:12-86 present just

such circumstances. Respondent asserts that the Division fails, however, to present a record which adequately supports that conclusion.

Respondent observes that the Division has the burden of proof to establish the existence of a statutory disqualification for licensure. The burden must be carried by a preponderance of the credible evidence. A burden of this type is carried when the advancing party introduces evidence which is of greater weight, or more convincing, than that which is offered in opposition to it. Davidson v. Fornicola, 38 N.J. Super. 365 (App. Div. 1955) cert. den. 20 N.J. 467 (1956). See also, State v. Kale, 19 N.J. Super. 397 (App. Div. 1952) and 32A C.J.S. §102 at 648. Stated another way, evidence is in a preponderance when it is superior in credibility and truth to that evidence introduced in refutation and contradiction. Davidson v. Fornicola, supra. at 371. Respondent asserts that an analysis of the Division's arguments demonstrates its near concession to its inability to meet that standard and, in turn, the Division's attempt to construct arguments which transform the burden into one which rests with respondent. In short, because its evidence is weak, the Division tries to shift the focus away from that weakness. By way of illustration of its argument, respondent refers to the Division's post-hearing brief.

Respondent refers to the Division's approach to its "proofs" resulting from the tape-recorded conversation on May 29, 1987, between Palma and respondent. At the very outset of its brief, the Division sets the tone for its view of this evidence by asserting that respondent must "clearly, credibly and convincingly" explain it. If not, the Division continues, "neither bland denials of wrong-doing nor non-specific character evidence should or will save respondent from forfeiture of his casino key employee license." (Division's brief at p. 3). This approach turns the burden of proof at this hearing upside down. The Division has introduced, as evidence, a tape-recorded conversation. The Division then characterizes that conversation as "incriminating" and turns to respondent demanding that he prove to the contrary. Respondent contends that that is not how it works.

Respondent contends that it is in the characterization of the May 29, 1987 tape-recorded conversation between Palma and respondent that the true determination of the merits of this matter lies. The Division skips over that. It is for this administrative tribunal to determine whether that conversation truly is incriminating. More importantly, it is for the Division to demonstrate by the

superiority of the credibility and truth of its position, that the conversation in question truly is incriminating This, respondent argues, the Division cannot do and so it attempts to shift the burden to the respondent to prove to the contrary.

Respondent contends that the Division denotes a substantial portion of its brief constructing a theory of proof around a series of factors which are themselves not proof of anything. In pages 5 through 13 of its brief, the Division goes to great lengths to establish that respondent had the "motive" and "opportunity" to commit the acts of commercial bribery alleged in the Division's complaint. The Division clearly feels constrained to resort to arguments concerning extraneous circumstances in the absences of support for the underlying conduct itself.

Respondent asks the rhetorical question, what does it mean to allege that respondent had the "motive" and "opportunity" in this case? What is the basis for the Division's allegation of "motive?" Not only is the concept of "motive" of little consequence in this proceeding, the arguments used to establish the existence of "motive" dramatize the over-reaching character of the Division's case in general. Respondent contends that the "motive" argument advanced by the Division is very much like the Division's entire case - it creates an allegation out of conjecture for which there are no facts in support.

Respondent argues further, that the Division seeks to prove the conduct at issue by describing circumstances which existed permitting respondent the "opportunity" to commit those illegal acts. On review, however, the so-called "opportunity" described by the Division is no more than the self-evident fact of respondent's position of employment. Respondent's job status no more condems him than it condems any other person in a similar job, or in any other position that had some effect or impact on the issuance of contracts in question. It is again an example of the slender state of the Division's proofs that it must attempt to rest its case on so thin a proposition.

Respondent contends that the resolution of this matter hinges on the record. In reviewing the Division's brief, there is no extended citation to the testimony of the witnesses. Respondent submits that this is no coincidence because the Division cannot use the transcript testimony to any extent to its advantage. When the entirety of the testimony is considered, it is clear that it fails to support the Division's

asserted allegations. Without support, the Division's allegations cannot be sustained. Without support, the Division must fail and respondent must maintain his license.

With regard to the issue of respondent's good character, honesty and integrity as required by section 89b(2) of the Act, respondent observes that the Prehearing Order places the burden of proof on respondent as to those issues. With respect to the questions of mandatory disqualification, for which the burden of proof lies squarely with the Division, respondent urges this tribunal to also consider the following: (1) A finding that the alleged mandatory disqualification does not exist mandates a finding that respondent continues to possess the requisite good character, honesty and integrity to maintain his casino key employee license; and (2) The burden of proof on those issues should rest as well with the Division which has not sustained its burden; or (3) In the alternative, should this tribunal find that independent questions of good character, honesty and integrity must be addressed apart from the allegations of mandatory disqualification, and should this tribunal find that the burden of proof rests with respondent, the record supports a finding that respondent has carried that burden.

Respondent argues each of the three positions set forth above which shall not be repeated here.

Respondent argues, among other things, that the fact that respondent has a license which the Division wants to revoke is itself evidence that respondent has, at least in the past, demonstrated his good character qualifications. Respondent was drawn into a web created by an individual who is not to be trusted. If respondent made any mistake throughout the events at issue here, it was to trust Palma. Respondent trusted Palma to carry out significant responsibilities in his position of employment. Respondent trusted Palma to faithfully and honesty execute those responsibilities. Respondent trusted Palma when Palma reached out to respondent seeking help for the trouble in which Palma found himself. Misplaced trust, is not evidence of bad character. If anything, respondent's misplaced trust here is evidence of a kind of guilelessness that manifests the value of his character and his continuing qualification for casino key employee licensure.

B. Credibility

Respondent contends, among other things, that this matter hinges on findings of credibility of the two critical witnesses - respondent and Jerome Palma. Credibility covers a number of factors. State v. Zwillman, 112 N.J. Super. 6 (App. Div. 1970). Respondent contends that his proposed Findings of Fact recite those salient features of the testimony which illustrate the credibility of respondent and the incredibility of Palma. Despite this clear disparity in the integrity of the evidence offered by both sides, the Division continues to insist that it is Palma who is telling the truth. In its summation brief, the Division focuses almost exclusively on Palma's version of the facts.

Respondent observes the well established proposition that inquiry into a witnesses credibility may include examination of any favorable treatment by the State which that witness may have received in return for his testimony. State v. Gray, 67 N.J. 144 (1975); State v. Mazur, 158 N.J. Super. 89 (App. Div. 1978). Respondent further observes that Palma comes before this proceeding as a beneficiary of profound advantages for his having agreed to testify in the manner in which he has. Palma has received immunity from prosecution and the State has testified on his behalf at Palma's sentencing proceedings. Respondent asserts that Palma, as illustrated by his testimony, is an opportunistic, amoral, liar. All of these attributes conveniently converge when Palma was given the opportunity to save himself by inventing charges against his boss, respondent herein.

Respondent objects to the Division characterizing respondent's conduct during the course of the May 29, 1987 tape-recorded conversation with Palma as an "adoptive admission." The Division contends that because respondent did not vehemently deny every implication Palma raised in the course of the taped conversation respondent, therefore, admitted complicity in Palma's bribery scheme. Respondent asserts that neither the law of adoptive admissions nor the taped conversation itself leads to any such conclusion.

Respondent argues that in order that evidence of a failure to reply to a statement of fact may be admissible as an admission, that reply must be natural and proper and the party must have had knowledge and an opportunity sufficient to

enable that reply. 31A C.J.S. §295 at 755; See also, Greenberg v. Stanley, 30 N.J. 485 (1959); Kiernan v. Maner, 13 N.J. Super. 18 (App. Div. 1951). The lack of an answer can only be considered an admission under circumstances where a specific answer was "naturally" called for. Greenberg v. Stanley. The circumstances of the May 29, 1987 taped conversation are not appropriate for application of the concept of an adoptive admission. In the course of the conversation, respondent expressly denies any complicity and, therefore, it can hardly be said that respondent was at all silent. Similarly, to the extent that there may have been some assertions by Palma to which respondent did not specifically disclaim knowledge or participation, these silences are entirely reasonable in the context of the conversation as a whole. It is not "naturally" called for that a person repeatedly deny the same thing when there have been numerous and substantial denials in other parts of the same discussion.

DISCUSSION AND CONCLUSIONS

COMMERCIAL BRIBERY, CONSPIRACY AND MISCONDUCT BY A CORPORATE OFFICIAL

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division acknowledges that Jerome Palma committed perjury and commercial bribery. Such criminal misconduct constitutes disqualifying offenses under sections 80d, 80g, 86a and 86c of the Act. The Division contends, moreover, that Palma entered into a conspiracy with respondent to commit the commercial bribery or misconduct by a corporate official in the second or third degree which also constitutes grounds for the revocation of a casino key employee's license pursuant to N.J.S.A. 5:12-86c(1), 86g and 89d.

Pursuant to N.J.S.A. 2C:21-10, the Code of Criminal Justice entitles this statute as "Commercial bribery and breach of duty to act disinterestedly." The sections pertinent to this matter are as follows:

> a. A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:
> ...
>
> (4) An officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association;
> ...
>
> d. If the benefit offered, conferred, agreed to be conferred, solicited, accepted or agreed to be accepted in violation of this section is $75,000.00 or more, the offender is guilty of a crime of the second degree. If the benefit exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. If the benefit is $1,000.00 or less, the offender is guilty of a crime of the fourth degree.

The offense of misconduct by a corporate official is set forth at N.J.S.A. 2C:21-9, in pertinent part as follows:

> A person is guilty of a crime when:
> ...
> c. He purposely or knowingly uses, controls or operates a corporation for the furtherance or promotion of any criminal object.
> If the benefit derived from a violation of this section is $75,000.00, or more, the offender is guilty of a crime of the second degree. If the benefit derived exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. ...

Conspiracy is defined at N.J.S.A 2C:5-2 as follows:

> a. A person is guilty of conspiracy with another person or persons to commit a crime if with purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

A review of the evidence in this matter clearly demonstrates that Jerome Palma committed the offense of commercial bribery in the second degree when he accepted, on a continuing basis, a benefit from AIA and Peter Chan while employed in the casino industry. Moreover, the Division asserts that Palma conspired with respondent to commit the offense of commercial bribery. In support of its assertion, the Division relies upon the testimony of Jerome Palma and surreptitious tape-recorded conversations between Palma and respondent and Palma and Peter Chan. The Division presented no direct evidence of a conspiracy between Palma and respondent. Nor did the Division produce direct evidence of respondent's involvement in a bribery scheme with AIA, Peter Chan or any other individual or entity.

The Division fails to produce any hard evidence that respondent was the recipient of any bribe or kickback money from anyone; e.g., bank records which would show unusually large deposits, records of purchase which would demonstrate excessive spending, individuals who witnessed the transactions, among others. The Division, instead, relies upon Palma's testimony alone which, under the circumstances, is suspect. Palma is an admitted perjurer. He admitted on this record that he lied to the Division's investigators when the Division was gathering information about bribes and kickbacks to Palma from AIA through Norma Thompson. Palma lied to his live-in house mate, Deborah French, when he kept a portion of her paycheck and told her that it was going back to her employers when, in fact, it was not. Palma lied to respondent when he denied participation in any bribe schemes.

Chief Justice Vanderbilt of our New Jersey Supreme Court said, In re Perrone, that:

> **The court...is free to weigh, the evidence and to reject the testimony of a witness...when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. 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 [citations omitted] at pp. 521-522.

Palma's testimony, throughout these proceedings, did not have the ring of truth. Too often he was evasive when asked the direct question as to how much in bribe money he received from AIA and Peter Chan. On other occasions he was imprecise or contradictory in response to precise and direct questions concerning respondent's involvement in his schemes.

Another consideration concerns "[t]he interest, motive, bias or prejudice of a witness which may affect his credibility and justify the jury [or court], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) [citation omitted], cert. den. 10 N.J. 316 (1952). It is well established on this record that Palma has been granted absolute immunity from prosecution for any and all crimes which arise within the jurisdiction of the New Jersey Courts as a consequence of his bribe taking from AIA and Chan. This immunity was predicated, not so much on Palma's admissions to his various criminal acts but, rather, based upon who he could implicate within the sphere of his criminal conduct. He chose his superior, respondent Willard Howard, with whom he had daily contact in the workplace. Palma's testimony is not to be believed because of his "interest, motive" and "bias" to avoid prosecution for his New Jersey crimes.

I **FIND** and **CONCLUDE** that the testimony of Jerome Palma, in so far as he attempts to implicate respondent Willard "Bucky" Howard in his criminal conduct, is incredible and not to be believed. In re Perrone. Jerome Palma had the interest, motive and bias not to tell the truth. State v. Salimone.

In the instant matter, the Division has the burden of proving its case by a preponderance of the reliable and credible evidence. This administrative tribunal must, therefore, "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of the truth." Jackson v. D.L. & W.R.R.,Co, 111 N.J.L. 487, 490 (E. & A. 1933). The evidence is found to preponderate if it "establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consolidated Gas Co. 124 N.J.L. 420, 423 (Sup. Ct. 1940) [citation omitted].

Here, the Division has failed to carry its burden. There is no evidence that respondent was in receipt of any money in the form of bribes or kickbacks from AIA or Peter Chan. N.J.S.A. 2C:21-10. Nor is there any evidence that respondent committed acts which would constitute the crimes of conspiracy and/or misconduct by a corporate official. N.J.S.A. 2C:5-4; N.J.S.A. 2C:21-9c.

Accordingly, I **CONCLUDE** that the Division has failed to prove Issues 3 and 4 as set forth in the Prehearing Order and, therefore, those issues are hereby **DISMISSED**.

DUTY TO PROVIDE ASSISTANCE AND INFORMATION

With regard to Issue 5, whether respondent breached his duty to provide assistance and information or that he supplied misleading and untrue information to the Division, I **FIND** and **CONCLUDE** that the Division has failed to carry its burden here also. This is so because the Division failed to show that respondent was aware of Palma's nefarious conduct with representatives of AIA or Chan concerning bribes and kickbacks. The Division could show that respondent was Palma's superior at the Tropicana and Trump Castle but that is all. There were no proofs presented to demonstrate that respondent had any knowledge of Palma's schemes to take bribes from AIA and Peter Chan. Consequently, respondent did not supply misleading or untrue information to the Division concerning Palma's activities with either AIA and Chan.

In respondent's defense to the charge, immediately following his encounter with Palma on May 29, 1987, respondent went to his attorney's office to demand that his attorney arrange for respondent to be interviewed by the New Jersey State Police under the Division's jurisdiction. The interview was arranged, at which respondent voluntarily waived all of his constitutional rights. Respondent answered all inquires addressed to him by the State Police in a candid and forthright manner. The Division offered no evidence to the contrary. Therefore, respondent did not breach his duty to provide assistance and information but, rather, met it.

Accordingly, I **FIND** and **CONCLUDE** that there is no merit to the Division's Charge as enunciated in Issue No. 5, and therefore, it is hereby **DISMISSED**.

GOOD CHARACTER, HONESTY AND INTEGRITY

A prerequisite to licensure as a casino key employee is the obligation of the license applicant to "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." N.J.S.A. 5:12-89b(2). In the absence of such clear and convincing evidence an application for a casino key employee license may be denied or; in the event the license has been granted, the lack of good character, honesty and integrity may form the basis to revoke the granted license.

The issue here (Issues Nos. 1 and 2) concerns whether the Division can prove its allegation that respondent took money from AIA and Peter Chan, therefore, bringing respondent's good character, honesty and integrity into question. As discussed hereinbefore, the Division was not able to prove respondent's participation or involvement in any scheme to take money from any vendors doing business with casinos where respondent was employed. Specifically, the Division did not prove that respondent took money from AIA or Peter Chan while employed in the casino industry under his casino key employee license.

I **FIND** and **CONCLUDE** that due to the Division's failure to prove its allegations that respondent was engaged in a conspiracy to commit commercial bribery and/or the crime of misconduct by a corporate official by receiving money from casino vendors AIA and Peter Chan, Issues Nos. 1 and 2 are hereby **DISMISSED**.

I further **CONCLUDE** that by virtue of respondent having been found innocent of the charge brought on by the Division, coupled with his grant of a casino key employee license by the Commission, respondent's good character, honesty and integrity is no longer in question and he has met the requirements pursuant to Section 89b(2) of the Act.

ORDER

For all of the reasons expressed hereinbefore, it is now **ORDERED** that the charges brought against respondent by the Division be and are hereby **DISMISSED IN TOTO** and **WITH PREJUDICE**.

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

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

29 August 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8/31/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 1 1989
DATE

Elizabeth Rogers
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

William DiGiuseppe
Trent W. Lyons
Jerome Palma
Mark Sivetz
Debra French

For the Respondent:

William J. Allison
Richard Zapulla
Paul Liu
Larry Clark
Phillip Juliano
Willard Howard
Frank Modica

EXHIBIT LIST

For the Petitioner:

P-1 Small manila envelope, sealed, containing tape
P-2 Small manila envelope, sealed, containing tape
P-3 Affidavit of James T. Clare
P-4 Tape
P-5 Small manila envelope, sealed, containing tape
P-6 April 10, 1987 transcript of proceedings before Commission
P-7 Check on account of W.C. Howard, payable to J. Palma, dated April 4, 1987
P-8 Check on account of W.C. Howard, payable to J. Palma, dated April 23, 1987
P-9 Transcript of Driver hearing
P-10 Transcript of enhanced tape-recording
P-11 Transcript of Driver hearing relating to P-5
P-12 Decision and Order of the Division of Gaming Enforcement for the suspension of Jerome Palma
P-13 Interview of September 4, 1987 to file from Mark P. Sivetz
P-14 Requisition for purchase, Trump Castle
P-15 Transcript of Arthur Toll trial, dated February 2, 1988
P-16 Transcript of Sworn Interview of Debra French dated April 21, 1989
P-17 Net Worth Statement
P-18 Grand Jury Testimony
P-19 Trial Transcript
P-20 Interview Report of Marvin Alloy
P-21 Interview Report of Peter Eliakis
P-22 Interview Report of Arthur Kania
P-23 Order, Stipulation, and Arrest Report of Thomas Stanley
P-24 1984 Investigative Report of William J. Allison
P-25 1985 Investigative Report of William J. Allison
P-26 Nevada Gaming Board Minutes

For the Respondent:

R-2 Aircraft charter agreement, dated October 8, 1982, between Tropicana and AIA
R-3 Memo, dated March 22, 1983, to J. Palma from B. Yoachum
R-4 Memo, dated March 23, 1983, to B. Yoachum from J. Palma
R-5 Memo, dated July 6, 1984, to J. Palma from B. Yoachum, Subject: AIA
R-6 Letter, dated April 15, 1985, on the letterhead of Atlantic City Hilton, to P. Chan from J. Palma
R-7 Purchase Order, dated April 14, 1986, to Peter C.M. Chan Productions, A.C. Hilton Casino
R-8 Purchase Order, dated May 13, 1986, to Peter C.M. Chan Productions, Trump Castle
R-9 Packet of documents, with cover letter, memo, to Ivana Trump, dated June 3, 1985
R-10 Letter from Mr. Brown to Ms. French dated February 28, 1989
R-11 Letter from Mr. Brown to Ms. French dated April 6, 1989
R-12 Character testimony of Alfred Luciani from September 1988 trial of Mr. Howard
R-13 Character testimony of Seymour Kravitz from September 1988 trial of Mr. Howard
R-14 Character testimony of Mack Seelig from September 1988 trial of Mr. Howard

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-137
LICENSE NO. 45593-21
OAL DOCKET NO. CCC 195-89
ORDER NO. 89-43-11

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

Complainant,

v.

RALPH E. HUNTER, JR.

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 1, 1989,

IT IS on this 22nd day of November 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 195-89
AGENCY DKT. NO. 89-137

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RALPH E. HUNTER , JR.,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Ralph E. Hunter, Jr., respondent, pro se

Record Closed: July 18, 1989 Decided: September 1, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on November 12, 1988, seeking revocation of the respondent's casino employee license. The basis of the Division's complaint is its allegation that the respondent committed the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, while working on the floor of the Sands Casino on July 4, 1988. These are the issues:

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1. With specific reference to the respondent's arrest on July 4, 1988, for theft by unlawful taking contrary to N.J.S.A. 2C:20-3, has the respondent committed an offense which would render his continued casino employee licensure inimical to the policy of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Does the respondent possess the good character, honesty and integrity required for casino employee licensure, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

On December 9, 1988, the Casino Control Commission received the respondent's request for a hearing concerning the Division's complaint. On January 11, 1989, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Administrative Law Judge Stephen W. Thompson conducted a prehearing conference on March 14, 1989. At that time, Judge Thompson scheduled the matter to be heard by the undersigned on June 9, 1989. The hearing was held as scheduled at the Office of Administrative Law in Atlantic City, New Jersey. It was thereafter necessary for me to review the transcript in this matter and the record closed when the transcript was received on July 18, 1989.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The respondent is a 32-year-old Atlantic City resident. He is married and he has three children. The respondent holds casino employee license no. 45593-21.

New Jersey State Police Detective Sergeant Richard A. Loufik testified on behalf of the Division of Gaming Enforcement. On July 4, 1988, he was assigned to the casino investigation bureau with responsibility for investigating crimes and violations relating to gaming at the Sands Casino. According to Detective Sergeant Loufik, he was summoned by the Sands Surveillance Department to the video monitor room on the evening of July 4, 1988.

When Detective Sergeant Loufik arrived at the monitor room, he was shown a video tape of the respondent working on the casino floor. At that time, the respondent had been employed by the Sands Casino as a slot change person for about 30 days. The relevant section of the video tape showed a time of 10:07 pm. Watching from that point on the tape, Detective Sergeant Loufik observed the respondent place paper currency into the top drawer of the coin box. The respondent then took some paper currency from the box, folded it into his left hand, and placed the money in his left rear pants pocket. During this entire time, the coin box was open with a key in the lock. Detective Sergeant Loufik stated that the key cannot be removed from the door when the door is open.

The video tape which was viewed by the detective sergeant was admitted into evidence as Exhibit P-1 and it was shown at the hearing. The detective sergeant testified that after he viewed the video tape on July 4, 1988, he went to the casino floor and asked the respondent to come to the Division of Gaming Enforcement office. When there, the respondent was read his Miranda rights. The respondent was then asked to wait and the detective sergeant posed some questions of the respondent's supervisors.

Anticipating the possibility that the respondent might claim that he had received a tip which he was placing in his pocket, the detective sergeant asked the supervisors how an employee was required to deal with tips. He was told that if a slot change employee receives a tip, he is to report the tip to his supervisors immediately.

Detective Sergeant Loufik returned to the respondent and the respondent was searched. In the respondent's left rear pants pocket were found one $5 bill and five $1 bills. In addition, the respondent had $34 in his license holder.

Although the respondent's explanations have varied, it is undisputed that he denied taking any money that did not belong to him. In any event, the respondent was advised that he was under arrest and that he was charged with theft by unlawful taking. An audit of the respondent's cash box proved to be inconclusive. Although there was a shortage of $320, it is undisputed that the cash box was not fully supplied at the beginning of the respondent's shift. It is also undisputed that the criminal case against the respondent was subsequently dismissed.

The respondent had several arrests prior to July 4, 1988. However, among these arrests there was only one conviction. This was for shoplifting in Ventnor in 1985. The respondent has one subsequent conviction as well. This was a 1988 conviction for simple assault against his wife.

The respondent has a record of about seven years employment in the casino industry. Prior to working at the Sands Casino, the respondent was employed as a change person at the Claridge Casino for about a year. He also was employed at the Tropicana Casino as a change person.

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

The factual dispute in this matter concerns the explanation given by the respondent for placing paper currency in his pocket while working on the casino floor. Testifying on his own behalf at the hearing, the respondent stated that he had received a tip of $10 in coins. He put the coins in his apron and then cashed it in himself. He then put the paper money in his rear pocket. According to the respondent, this is the activity which is shown on the video tape.

The respondent was asked at the hearing what the proper procedure would be when he received a tip. He acknowledged that he should have waived the money over his head before putting it in his pocket. He did not mention that he should have also immediately notified his supervisors about the tip.

Detective Sergeant Loufik testified that the respondent mentioned nothing about receiving a tip when he was questioned on July 4, 1988. Rather, the respondent had an entirely different explanation all together. According to the detective sergeant, the respondent stated at that time that any money which he took out of the coin box was placed in his apron. If he placed anything in his rear pants pocket, it must have been the key to the coin box. The witness noted that the key to the coin box was not in the respondent's rear pocket when he was searched. In addition, the witness noted that the coin box was open when viewed on the video tape and it is not possible to remove the key from the coin box door when it is open.

It is significant that the respondent only denied putting money in his rear pants pocket before he had an opportunity to view the video tape. After that time, it surely became difficult for the respondent to deny putting money in his rear pants

pocket because this conduct is plainly shown on the video tape. Instead, the respondent then offered a different explanation: he received a tip and he was putting it in his pocket. This explanation is simply not believable. If the respondent had received the tip on July 4, 1988, it is reasonable to believe that he would have so advised the investigator when questioned about putting money in his pants pocket. The testimony of Detective Sergeant Loufik was straightforward, sincere and entirely believable. The respondent's testimony had none of these attributes. Thus, I further **FIND AS FACT** that while the respondent was working on the floor of the Sands Casino on July 4, 1988, he took money which did not belong to him by placing it in his rear pants pocket.

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Pursuant to sections 90e and 86c(2) of the act, the Commission may revoke the credential of any licensee who has been convicted of any offense which indicates that continued licensure would be inimical to the policy of the Casino Control Act and to casino operations. Under section 86g of the act, the license shall be revoked as the result of the commission of any such offense, even if the conduct of the licensee has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the respondent was charged with theft by unlawful taking in the fourth degree, contrary to N.J.S.A. 2C:20-3. It is also undisputed that this charge was dismissed. Nevertheless, I have found that the respondents did take money which did not belong to him while he was working on the floor of the Sands Casino on July 4, 1988. The amount taken was more likely than not between $10 and $44. Because the respondent's theft involved an amount less than $200, it constitutes a disorderly persons offense, pursuant to N.J.S.A. 2C:20-2b(3). I so **CONCLUDE.**

Does the respondent's commission of theft render his continued casino employee licensure inimical to the policy of the Casino Control Act and to casino operations, pursuant to sections 86c(2) and 86g of the act? The Commission has held that the rehabilitation factors set forth in section 90h of the act must be considered in any case involving a licensee under the act where section 86c(2) disqualification is

at issue. In other words, the rehabilitation factors are an integral part of the inimicality analysis. In the Matter of the Application of Horizon Air, Inc., for a Casino Service Industry License, Dkt. No. 87-CSI-10 (Commission Decision September 1, 1988).

Section 90h sets forth eight factors which should be considered in determining whether rehabilitation has been affirmatively demonstrated. These include the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred, the date of the conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent's offense was relatively recent, having occurred on July 4, 1988. Since the respondent is 32 years old, it does not appear that immaturity was a factor in his conduct. The respondent also has a record of arrests and convictions. He was convicted of shoplifting prior to the present incident and subsequently, he was convicted of simple assault.

The respondent's unlawful conduct touched directly on the performance of his duties as a licensed casino employee. The seriousness of his offense of theft from a casino employer is compounded by his denial of the conduct. It could not fairly be stated that the respondent's unlawful conduct was aberrational and not likely to be repeated since so little time has passed after the conduct. In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent's continued participation as a casino employee licensee would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(2) and 86g of the Casino Control Act.

Pursuant to section 80a of the act, it is the affirmative responsibility of each licensee to establish by clear and convincing evidence his individual qualifications. Among these are good character, honesty and integrity, pursuant to sections 89b(2) and 90b of the act. The foregoing rehabilitation factors which have been considered in the analysis of "inimicality" are equally relevant in determining whether the respondent possesses the good character, honesty and integrity required for

licensure. Based upon the foregoing conclusion, I further **CONCLUDE** that the respondent has failed to establish his good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Ralph E. Hunter, Jr., be **REVOKED**.

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

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

September 1, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

September 5, 1989
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 6 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

595

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Video tape dated July 4, 1988

For the respondent:

None

WITNESSES

For the petitioner:

Richard A. Loufik

For the respondent:

Ralph E. Hunter, Jr.

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1989

K - Z

PREPARED BY THE LEGAL DIVISION

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78.	State of New Jersey v. Evelyn Blondell Patterson	OAL CCC 6372-88 Agency 89-50	07/10/89	772
79.	State of New Jersey v. Donald Pors (see, GNOC Corp.)			379
80.	Application for renewal of the casino employee license of Jeannie D. Price a/k/a Jeannie D. Gruber	OAL CCC 856-89 CCC 2669-88 (on remand) Agency 88-EA-110	07/31/89	777
81.	State v. New Jersey v. Thomas J. Pullman	OAL CCC 8836-88 Agency 89-128	10/19/89	800

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
82.	Application for renewal of the casino employee license of Luis A. Quintana	OAL CCC 106-89 Agency 89-EA-266	10/19/89	812
83.	Petition of Resorts International Hotel, Inc. (See, Murrell Watkins)			1044
84.	State of New Jersey v. Doris E. Reynolds	OAL CCC 7707-88 Agency 89-17	08/14/89	823
85.	State of New Jersey v. Isaac Riggins	OAL CCC 112-89 Agency 89-138	11/13/89	833
86.	Application for renewal of the casino employee license of Robert K. Robins	OAL CCC 8827-88 Agency 89-EA-136	08/09/89	845
87.	State of New Jersey v. Luzberto Rodriguez	OAL CCC 2853-89 Agency 89-162	11/27/89	854
88.	State of New Jersey v. Nancy Jean Rosenfield a/k/a Kawejsza	OAL CCC 00244-89 Agency 89-81	12/22/89 Decision 01/22/90	867
89.	State of New Jersey v. Shawn L. Saxon, a/k/a Shawn Phillips and Shawn Smith	OAL CCC 113-89 Agency 89-149	09/11/89	888
90.	State of New Jersey v. John Scott (See, Calmark)			64
91.	State of New Jersey v. Uri Sheinbaum (See, Calmark)			64
92.	State of New Jersey v. Claudia A. Simpson a/k/a Claudia L. Simpson	OAL CCC 9380-88 Agency 86-66	09/19/89	907
93.	Application of Robert A. Singletary for a casino employee license and State of New Jersey v. Robert A. Singletary	OAL CCC 8089-88; CCC 8452-88 Agency 89-EA-110; 89-129	07/10/89	917

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
94.	State of New Jersey v. Carol Skorupski (See, State v. Trump Plaza Associates)			950
95.	State of New Jersey v. Matt Smith (See, Calmark)			64
96.	State of New Jersey v. Ygal Sonenshine (See, Calmark)			64
97.	Application of Swiss Services of Massachusetts, Inc., for a casino service industry license	OAL CCC 5876-88 Agency 88-CSI-12	11/16/89	927
98.	Application for renewal of the casino employee license of Linda J. Talley	OAL CCC 9247-88 Agency 89-EA-195	08/03/89	940
99.	Qualification of Armando Tortu (See, Gourmet Bouquets, Inc.)			422
100.	Qualification of Christopher Tortu (See, Gourmet Bouquets, Inc.)			422
101.	Qualification of Irene Tortu (See, Gourmet Bouquets, Inc.)			422
102.	State of New Jersey v. Trump Plaza Associates, t/a Trump Plaza Hotel and Casino and Carol Skorupski	OAL CCC 4550-88 Agency 88-343	07/18/89	950
103.	Application of David Vega for a casino employee license and State of New Jersey v. David Vega	OAL CCC 8215-88; CCC 254-88 (on remand) Agency 88-EA-104; 88-63	07/24/89	972

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
104.	State of New Jersey v. Tich Van Vo	OAL CCC 2965-89 Agency 83-363	12/06/89	983
105.	Application of Dmytro J. Wac for a casino employee license and State of New Jersey v. Dmytro J. Wac	OAL CCC 1152-89; CCC 2526-89 Agency 89-EA-305; 89-297	10/19/89	994
106.	Applications of Paul Waitze, Arthur Block and Stanley R. Greenberg for junket representative licenses	OAL CCC 1096-89 Agency 88-EA-75; 88-EA-76; 88-EA-77	09/20/89	1008
107.	Application for renewal of the casino employee license of Patricia A. Washington	OAL CCC 8830-88 Agency 89-EA-135	07/20/89	1034
108.	Petition of Murrell Watkins and Abraham McDaniel To Intervene In The Casino License Renewal Proceedings for Bally's Park Place, Inc., Resorts International Hotel, Inc.	PRN 355803 PRN 355804	Opinion 4/27/89	1044
109.	State of New Jersey v. Robert Weiss (See, Calmark)			64
110.	Application for renewal of the casino employee license of Kent Wells	OAL CCC 9469-88 Agency 89-EA-209	08/10/89	1056
111.	State of New Jersey v. Marlene Westhoff	OAL CCC 00625-88 Agency 87-386	11/27/89	1067
112.	Application of Consuelo C. Williams for a casino employee license	OAL CCC 6791-88 Agency 88-EA-158	10/12/89	1082

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-247
APPLICATION NO. 74644-21
ORDER NO. 89-33-12
OAL DOCKET NO. CCC 107-89

APPLICATION OF DOROTHY KENNEDY

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 16, 1989,

IT IS on this 24th day of August 1989, ORDERED that the initial decision is modified as follows:

> Section 89(b)(2) [as well as section 84(c)] of the Casino Control Act was amended to delete the reference to a "reputation for" in connection with an applicant's affirmative burden of establishing good character, honesty and integrity. (L. 1987, c. 354).

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 8/24/89

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 107-89
AGENCY DKT. NO. 89-EA-247

DOROTHY KENNEDY,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Dorothy Kennedy, petitioner, pro se
Charles Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 1, 1989 Decided: July 3, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL ASPECTS

On November 15, 1988, the Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) setting forth negative information concerning petitioner, however, taking no position as to whether or not the Commission should grant petitioner's application for a casino employee license as a slot attendant.

The matter was transmitted from the Commission to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to

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N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 20, 1989, followed with a plenary hearing conducted on June 1, 1989 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The herein record closed on June 1, 1989.

ISSUES

The issues to be determined by this tribunal and as agreed to by the parties are as follows:

A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-4, Theft by Deception.

B. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

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

UNCONTESTED FACTS

The following facts are neither contested nor in dispute and, therefore, are hereby adopted, by reference, as **FINDINGS OF FACT**:

On July 30, 1981, petitioner filed for bankruptcy under Chapter 13 of the United States Bankruptcy Code before the United States Bankruptcy Court, Camden, New Jersey. Petitioner's payment plan was completed on or before August 14, 1986, and her case was closed effective on that date (R-2).

On March 24, 1982, when petitioner was 39 years of age, she was indicted by a Camden County Grand Jury, Indictment No. 1727-81, and charged with Fraud-Welfare, in violation of N.J.S.A. 2A:111-2 (Repealed, L. 1978, c. 95 § 2C:98-2, eff. Sept. 1, 1979). The alleged offenses occurred prior to the implementation of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. (R-1). On May 17, 1982, before the Honorable Richard S. Hyland, J.S.C., petitioner retracted her plea of not

guilty and entered a plea of guilty to the offense. Judge Hyland therefore ordered that petitioner: Be placed on five years probation; Repay Camden County Welfare Agency the amount of $1,852 by way of a reimbursement plan with the agency; and, perform 100 hours of non-compensatory community service during each year of her probation. Petitioner was not subject to penalty to the Violent Crimes Compensation Board (VCCB) because the offenses were committed prior to the enactment of the VCCB legislation (R-1).

At the time petitioner committed the offenses, she collected welfare benefits from the Camden County Board of Services while employed at the Ken-Crest Center, a facility for handicapped children in Philadelphia, Pennsylvania. Petitioner was a single parent with two minor children in the household. She asserts that while employed, she did not earn enough money to maintain the household, therefore, she accepted the welfare payments while employed between January 1975 and February 1979.

Petitioner successfully completed her five year probationary period. She was, however, excused from the performance of her 100 hours of community service due to medical reasons. Petitioner has not voluntarily made any restitution payments to the Camden County Welfare Agency although she completed the payment plan in bankruptcy in the amounts of $2,980 in secured debt and $1,709 in unsecured debt. Petitioner, who now earns approximately $200 per week, contends that she cannot afford to make restitution payments. She asserts that in partial payment, her New Jersey State Income Tax refunds are automatically applied to this debt which, because of accumulated interest, amounted to $9,709.85 as of March 1988. Petitioner has been tentatively offered a position paying between $7.00 to $8.00 per hour as a slot attendant at the Showboat Hotel/Casino. She contends she will begin making restitution payments if and when she is permitted to work in the casino industry.

TESTIMONIAL EVIDENCE

Petitioner, who is now 46 years of age, readily admits to the offense of welfare fraud. She asserts that she does not presently earn enough money to make payments in restitution to the Camden County Board of Services. However, petitioner contends that she is rehabilitated and that she will make the necessary

repayments to the agency if she is permitted to be licensed as a slot attendant where she will earn more income.

Sharon Kennedy, petitioner's 25 year old daughter testified on petitioner's behalf. Ms. Kennedy is employed by the Social Security Administration in Camden, New Jersey and lives with her mother in Blackwood, New Jersey. Ms. Kennedy contributes $225 per month toward rent and pays the household electric bill of $20 per month plus the cable television fee of $27.75 per month. Ms. Kennedy opined that it was not wrong for her mother to take the welfare money because the circumstances, at the time, did not permit her mother to earn sufficient income to care for Ms. Kennedy and her younger brother. Ms. Kennedy requests that the casino employee license be granted.

Vanetta Elizabeth Kersey testified on petitioner's behalf asserting that she had been a friend of petitioner for 10 years. Ms. Kersey, who was aware of petitioner's guilty plea to the charge of welfare fraud, testified that petitioner was known as a hard working lady attempting to raise two children without any financial assistance from the absent father. She asserted that petitioner was successful in raising her children and was able to send her son through four years of college. Ms. Kersey asserted that petitioner's friends and fellow church members speak very highly of petitioner and her family.

Ms. Kersey personally admires and respects petitioner for her ability to raise and support two children on the limited income petitioner earned. This is particularly true given the fact that petitioner was required to pay $500 per month in rent. Ms. Kersey opines that petitioner's offense of welfare fraud was a circumstance where petitioner got caught up in a system where there was no financial help to raise the children from the absent father. Ms. Kersey opines that the fault lies, in part, with the State which did not demand help from the absent father by way of child support payments to petitioner and her children.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the

revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

Although petitioner was convicted of violating N.J.S.A. 2A:111-2(Frauds and Cheats, related to obtaining money or property by falsely pretending to be poor or unemployed) the law was repealed by L. 1978, c. 95 and superseded by N.J.S.A. 2C:20-4, theft by deception, a disqualifying offense for casino employee licensure under N.J.S.A. 5:12-86c(1) of the Casino Control Act (Act). Petitioner admits to theft by deception in an amount of $8,152. Pursuant to N.J.S.A. 2C:20-2(2)(a), theft constitutes a crime of the third degree if: the amount involved exceeds $500.

I **CONCLUDE**, therefore, that petitioner committed a violation of N.J.S.A. 2C:20-4, a crime of the third degree, and therefore, she is disqualified to hold a casino employee license, pursuant to N.J.S.A. 5:12-86c(1).

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

In consideration of petitioner's claim of rehabilitation, the following has been found in this record.

First, petitioner Dorothy Kennedy is an applicant for a casino employee license as a slot attendant. Petitioner is not presently employed in the casino industry. Although the license and position for which petitioner has applied is indirectly related to gambling activity, the position she seeks will place her in direct and substantial contact with casino patrons.

Second, petitioner committed an ongoing offense of fraud against the Camden County Board of Social Services off and on during the period January 1975 to February 1979. The offense is of a serious nature by virtue of its classification as an automatic disqualifier to hold a casino employee license under section 86c(1) of the Act.

Third, the underlying circumstances which lead petitioner to commit the offense was triggered, in part, by the lack of financial support for her two minor children from the absent father. Petitioner was engaged in a low paying position in a foreign state (Pennsylvania) while she and her two children maintained their residence in Camden County, New Jersey. Her earnings from her full-time employment were insufficient to maintain and keep the family together. Consequently, she applied for and received a welfare grant from Camden County for a period of approximately four years. Petitioner knows that her conduct was wrong and has expressed genuine remorse for the offense.

Fourth, the offense of welfare fraud was committed by petitioner, off and on, between January 1975 and February 1979.

Fifth, petitioner was 32 years of age when the fraud commenced and 36 years of age when it terminated.

Sixth, the offense was a single continuous offense as demonstrated by petitioner's judgment of conviction and to which she entered a guilty plea.

Seventh, the only social conditions which may have contributed to the offense are expressed in paragraph three above.

Eighth, petitioner has evidenced rehabilitation by successfully discharging certain secured and unsecured debts in bankruptcy under Chapter 13 of the United States Bankruptcy Code. The evidence shows that subsequent to the judgment of conviction dated June 25, 1982, petitioner has not committed any offense set forth in the New Jersey Code of Criminal Justice, N.J.A.C. 2C:1-1 et seq. Nor was any evidence produced that petitioner had a prior record of criminal conduct. Petitioner admits that she has not made restitution of the $8,152 as ordered by the Court's Judgment of Conviction, dated June 25, 1982. Notwithstanding that petitioner's New Jersey State Income Tax refunds, when available, have been applied to this outstanding debt, it has grown to $9,709.85 as of March 1988 due to accumulated interest. Petitioner is willing to make payments in restitution and enter into a payment plan with the welfare agency if and when she acquires a better paying job.

Petitioner is and has been caught in a "Catch-22" situation where she wants to make restitution for money she obtained fraudulently but cannot because she is in such a low paying position. The herein record reveals, however, that when a specific repayment plan was ordered by the Bankruptcy Court, petitioner was able to meet her obligations under the ordered repayment plan while employed full-time. It would appear, therefore, that under a specific and structured payment plan with the Camden County Board of Social Services, petitioner could and would meet her obligations to repay the full amount due and owing. It is obvious that the recoupment of petitioner's State Income Tax refund will not serve the purpose of the repayment of the debt. This is due to the fact that the debt has grown from its original ordered amount by $1,557.85, including the petitioner's tax refunds.

The record does show that petitioner had no recorded criminal record either prior to or subsequent to the admitted offense. She has, except for the one recorded

adjudication, lead an exemplary life raising two minor children to adulthood without outside financial support.

I **CONCLUDE**, therefore, that petitioner has demonstrated, by clear and convincing evidence, she is rehabilitated, pursuant to N.J.S.A. 5:12-90h, and given the opportunity, she will repay the entire amount to the Camden County Welfare Agency due and owing as a consequence of the Judgment of Conviction dated June 25, 1982.

Petitioner Kennedy is required to establish her reputation for good character, honesty and integrity, by clear and convincing evidence under Section 90b which incorporates Section 89b(2) by reference. The Commission has held that an individual's actual character and attributes of good character, honesty and integrity are true key factors. *In the Matter of the Application of Resorts International Hotels for a Casino License*, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the individual's reputation in issue and objects to licensure under Section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324 (App. Div. 1981).

Petitioner presented a credible witness in Ms. Kersey who testified about petitioner's reputation among her friends and church members. Ms. Kersey could not testify as to petitioner's reputation in the community with regard to petitioner's honesty and good character because Ms. Kersey did not reside in petitioner's community or neighborhood. Ms. Kersey, who has known petitioner for 10 years, was aware of petitioner's offense of welfare fraud and asserted that petitioner was, nevertheless, admired by Kersey for the manner in which petitioner raised her two children as a single parent under adverse circumstances. Ms. Kersey testified that petitioner was always honest with her and had a reputation for good character by individuals acquainted with petitioner and Ms. Kersey. Ms. Kersey is of the opinion that petitioner seeks a better paying job in order to make full restitution to the Camden County Welfare Agency and to "wipe her slate clean." (TR. p. 34).

Having observed petitioner and those witnesses who testified on her behalf, and having assessed their decorum and credibility, I **CONCLUDE** that petitioner has

established, by clear and convincing evidence, that she possesses the requisite good charac er, honesty and integrity for licensure in the casino industry. Petitioner made an error in judgment in the distant past, not for her own selfish purposes but, rather, for her minor children and under adverse circumstances. She is willing to pay for her error, however, she requests the opportunity for work that will compensate her to the degree that she is able to meet her living expenses and enter into a payment plan with the Camden County Board of Social Services for the repayment of the debt due and owing. Licensure as a slot attendant will offer that opportunity.

For all of the reasons set forth above and recognizing that the Division has taken no position with respect to whether or not a casino employee license issues, I **CONCLUDE** that notwithstanding petitioner's disqualifying offense, she is rehabilitated and possesses the requisite good character, honesty and integrity and that her application for licensure as a slot attendant be granted.

ORDER

Accordingly, it is hereby **ORDERED** that the application of Dorothy Kennedy for a casino employee license be and is hereby **GRANTED**.

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

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

3 July 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7-7-89
DATE

Angel Lucio
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 7 1989
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Dorothy Kennedy
Sharon Kennedy
Vandetta Kersey

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

P-1 Letter of Recommendation

For the Respondent:

R-1 Judgment of Conviction and Sentence Sheet
R-2 Bankruptcy Petition
R-3 Bankruptcy Petition

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-29
APPLICATION NO. 2470-11
OAL DOCKET NO. CCC 6713-88
ORDER NO. 89-35-8

APPLICATION OF HAROLD KLARICH

FOR A CASINO KEY EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 30, 1989,

IT IS on this 6th day of September 1989, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6713-88
AGENCY DKT. NO. 89-EA-29

APPLICATION OF
HAROLD KLARICH
FOR A JUNKET
REPRESENTATIVE LICENSE

Phillip Scalo, Esq., for petitioner (Smith, Don, Alampi and Scalo, attorneys)
Richard T. Morrissey, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 10, 1989 Decided: May 31, 1989

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

PROCEDURAL HISTORY

On July 13, 1988, the Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) concerning the issuance of a casino key employee license to the petitioner.

On September 9, 1988, the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on December 12, 1988. A plenary hearing was conducted on April 3, 1989 and April 10, 1989 in Atlantic City. The time in which to file an Initial Decision was extended until June 2, 1989 by Order of the Commission at the request of the OAL and the undersigned.

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BACKGROUND INFORMATION

In 1984, the Division filed a complaint against petitioner and others at docket number CCC 4355-84. That complaint was dismissed without prejudice by Joseph Fidler, Administrative Law Judge (ALJ), upon a representation, which now appears to have been false, by a then deputy attorney general, that a key prosecution witness was not available. The matter was remanded to the ALJ by the Commission at docket number CCC 5617-86. The Commission's Order directed the ALJ, among other things, to determine if the prejudice suffered by the respondents by the Division's failures to comply with discovery orders required dismissal of the complaint or lesser sanctions. The ALJ made findings of fact inimical to respondent. The Commission commended the ALJ for his efforts to comply with the Commission's Order of Remand but nevertheless determined in its final Order that "the prejudice which affected the initial proceeding proved irreparable" and dismissed the complaint against respondent Klarich who is the petitioner here.

STATEMENT OF THE CASE

The Division's letter of July 13, 1988, did not object to the issuance of a key casino employee license to respondent. However the letter indicated that the Division was in possession of negative information concerning respondent's financial stability, integrity and responsibility. Casino key employees are required to possess financial stability, integrity and responsibility by N.J.S.A. 5:12-89b(1).

The letter also indicated that the Division had negative information about the respondent's character. Good character, honesty and integrity are required of casino key employees by N.J.S.A. 5:12-89b(2).

The letter referred to respondent's criminal record. The respondent does not have a criminal record. It is apparent from the Division's letter that the criminal conduct complained of was the ALJ's finding that respondent engaged in commercial bribery. But the ALJ's recommendations with respect to respondent were rejected in the Commission's Final Order of May 9, 1988.

Finally, the Division's letter claims that the Division is in possession of unsatisfactory information regarding respondent's business ability and casino experience. These qualities are required of casino key employees by N.J.S.A. 5:12-89b(3).

The Commission's letter of transmission of September 9, 1988, does not identify any single issue upon which the Commission seeks clarification at the hearing. But, at the prehearing conference, the Division sought to limit the issues to be determined at trial to the respondent's relationship to one Gary Eilenberg who was a co-respondent of the petitioner in OAL Docket Number CCC 4355-84 and CCC 5617-86 mentioned above.

A fair reading of the Division's letter reflects that the relationship between petitioner and Gary Eilenberg is of paramount concern to the Division and not the financial or casino ability of respondent. At the hearing, the Division confined its proofs to this sole issue. Nevertheless, the Division's letter of July 13, 1988, expressed concerns in all the areas mentioned above. In addition, every applicant for a casino key employee license bears the burden of proof on fitness for licensure by clear and convincing evidence according to N.J.S.A. 5:12-86. I therefore determined that the relevant questions to be resolved at the hearing were:

1. Does the petitioner possess the requisite financial stability, integrity and responsibility for casino key employee licensure? N.J.S.A. 5:12-89b(1).

2. Does the petitioner possess the requisite good character, honesty and integrity for casino key employee licensure? N.J.S.A. 5:12-89b(2).

3. Does the petitioner possess the requisite business ability and casino experience for casino key employee licensure? N.J.S.A. 5:12-89b(3).

FINANCIAL STABILITY, INTEGRITY AND RESPONSIBILITY

The petitioner has a net worth of $21,500. In 1982 and 1983 while employed in the casino industry, petitioner filed income tax returns reporting a gross income of $46,471 and $53,006 respectively. In 1984, after the loss of his temporary casino

employee junket license, petitioner earned too little income to report to the IRS. In 1985, petitioner reported income of $13,113. In 1986 petitioner reported income of $9,758, and in 1987 he reported income of $16,749. In addition to petitioner's loss of earning potential as a result of his licensing problems, petitioner suffered from a debilitating neurological problem for 15 months in 1986 and 1987. These problems consumed petitioner's savings and he went into debt to family and friends. Since November 1987, petitioner and his wife have both been employed at annual salaries of $30,000. As a result, they have reduced their indebtedness and have been able to preserve certain assets acquired by the petitioner's wife through inheritance.

There are no liens or judgments against the petitioner or his wife. His IRS returns are in regular order. Petitioner and his wife maintain regular checking accounts and a money market checking account. The Division found no irregularities in either account.

The petitioner owes $3,000 to a friend and $3,500 to his sister. These are his only outstanding unsecured loans. Petitioner and his wife own a 1985 Toyota Camry. They do not own real estate or stock and bonds.

The petitioner's financial position is unremarkable. His earning power has been limited in recent years, nevertheless, he is both stable and responsible. He has exhibited integrity in his personal finances by maintaining a greatly reduced life style consonant with his reduced income.

I **CONCLUDE** that the petitioner possesses the requisite financial ability, integrity and responsibility for casino key employee licensure.

GOOD CHARACTER, HONESTY AND INTEGRITY

The petitioner exhibited the qualities of good character, honesty and integrity during the limited opportunity I had to view his credibility and demeanor as a witness and party during the 2 day hearing. He appeared to be straight forward in his answers to questions put to him at the hearing. He also gave a good impression to the division investigator who interviewed him and investigated his case. The investigator found him to be cooperative and prompt in supplying financial and

other information to him. More importantly, he found petitioner to be "open" with him.

The petitioner supplied two affidavits from persons who have had an opportunity over many years to learn the petitioner's reputation in the community for good character, honesty and integrity. One affiant is a lawyer and member of petitioner's counsel's firm who has known the respondent for 25 years. The other affiant is the owner and operator of a luncheonette who has known the petitioner for 15 years. Both affiants attest to the petitioners good character, honesty and integrity and his reputation for the same.

The petitioner has exhibited strength of character in overcoming two setbacks to his career. After loss of his casino license the petitioner searched the country for employment despite having reached the almost unemployable age of 50 something. He worked as a counterman in a diner, and as a tour operator.

After recovery from his 15 month illness, petitioner obtained employment and is still working in the credit department of a clothing company, Suzelle's Sportswear.

The petitioner's employment is the occasion of the Division's concern for his good character, honesty and integrity. The Division argues that the petitioner was employed at Suzelle by, is responsible to, and works side by side with, the Gary Eilenberg who was petitioner's co-respondent in CCC 4355-84 and CCC 5617-86. Gary Eilenberg is unfit for casino employee licensure. ALJ Joseph Fidler has concluded that Eilenberg committed commercial bribery and the Commission has adopted the ALJ's findings of fact in an unreported opinion, *State v. Eilenberg, et als* OAL DKT. NO. CCC 5617-86 (CCC 4355-84 ON REMAND) initial decision September 14, 1987, modified and affirmed by final Commission Order May 9, 1988.

Detective Cardamone interviewed petitioner at Suzelle's offices in Secaucus, New Jersey. Eilenberg, without invitation, joined Cardamone and petitioner during the interview and began to explain and justifv to the detective the conduct which resulted in his loss of licensure. The detective concluded that Eilenberg was boastful and not telling the truth. In the course of the interview, the detective either heard or assumed that Eilenberg was petitioner's supervisor and responsible for petitioner's obtaining the job at Suzelle. Eilenberg told Cardamone that he was the

general manager of Suzelles. The petitioner testified that it was Eilenberg who told Cardai none these things, not him. He did not correct Eilenberg during the interview. He said he did not want to argue with Eilenberg in front of the detective. Petitioner also said that he thought, from the detective's demeanor, that the detective recognized that Eilenberg was boasting rather than telling the truth.

This apparent conflict is easily resolved in favor of petitioner. The detective acknowledged that he could not be certain who spoke the words which appear to make petitioner an employee of Eilenberg. In addition, Frederick M. Oliff, an employee of Suzelle's Sportswear was called to testify. He is the credit manager for Suzelle. He is petitioner's direct supervisor. He said Eilenberg was not now and never has been the petitioner's supervisor or in the petitioner's chain of command. He identified Eilenberg as a member of Suzelle's owner's family and a "strange entity". He explained and corroborated petitioner's statement that petitioner was hired by Peter Feil, the vice president of the company, and not by Gary Eilenberg.

Counsel for petitioner suggested that Eilenberg is a supernumerary at the company owing his position to family connections. The testimony of Oliff appears to confirm this.

The connection between petitioner and Eilenberg does, at first blush, appear to be close. They were junket representatives who had known each other in Las Vegas. Eilenberg and petitioner were both employed by Resorts where Eilenberg was respondent's boss. They were both recruited for Tropicana by John Ciero in 1982, who knew them from Las Vegas.

Despite the fact that petitioner has known Eilenberg for many years and worked with him at Resorts, Tropicana and now Suzelle, he claims that he is not socially or economically connected with Eilenberg in any way. He says that he learned about the opening at Suzelles from a mutual friend of his and Eilenberg. This statement was unrebutted.

The Division was unable to show any meretricious relationship between Eilenberg and petitioner. It offered no witnesses that such a relationship existed or exists now.

I **CONCLUDE**, therefore, that the petitioner does possess the good character, honesty and integrity required for casino key employee licensure.

CASINO EXPERIENCE AND BUSINESS ABILITY

The petitioner was a junket representative for the Desert Inn, Frontier Casino and Tropicana Casino in Las Vegas, Nevada from May of 1976 until September of 1980. From then until November 1980, he was a shift manager at Big Al's Speakeasy in Las Vegas. From November 1980 until June 1982 petitioner was Pit Manager and Director of Marketing at the Treasury Casino in Las Vegas. In August and September of 1982, petitioner worked for Resorts International in Atlantic City and moved to the Tropicana in Atlantic City for six months. At both casinos he was a junket representative. In April of 1983, petitioner was recruited for Sands Casino Hotel by Robert Goldstein.

Robert Goldstein is now Executive Vice President for Pratt Hotel Corporation which has the Sands Casino in Atlantic City and in San Juan, Puerto Rico. He testified that he knows respondent's reputation in the casino industry since the 1970's. He said that respondent is a seasoned junket representative and he recruited him in 1983 in order to "penetrate the market quickly" and to train others. He said respondent enjoyed an excellent reputation with his, Goldstein's former partner and that is how he came to know him.

I **CONCLUDE** that the respondent possesses the requisite casino experience and business ability for casino key employee licensure.

ORDER

I **ORDER** that the letter of July 13, 1988 filed by the Division of Gaming Enforcement be and is hereby **DISMISSED**.

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

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

May 31, 1989
DATE

Edgar R. Holmes / lcl
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6/2/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 2 1989
DATE

Jayne LaVenia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Harold Klarich
Robert G. Goldstein
Frederick M. Oliff

For the Respondent:

Harold Klarich
Robert Cardamone

EXHIBIT LIST

For the Petitioner:

P-1 Interrogatories
P-2a through P-2e Five pages of notes from Detective Cardamone
P-3 DGE investigative summary report
P-3a Redacted DGE investigative summary report
P-4 Affidavit of Arthur R. Smith
P-5 Affidavit of Thomas Lambros

For the Respondent:

R-1 Casino Control Commission Order, dated May 9, 1988
R-2 Initial Decision of the OAL, decided September 14, 1987
R-3 Casino Control Commission Order, dated February 10, 1987
R-4 Initial Decision of the OAL, decided April 18, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-137
LICENSE NO. 45555-21
REGISTRATION NO. 13363-40
OAL DOCKET NO. CCC 8826-88
ORDER NO. 89-40-18

RENEWAL APPLICATION OF IRIS D. LABOY

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 11, 1989,

IT IS on this 20th day of October 1989, ORDERED that the initial decision is rejected and the Commission finds as follows:

1. The conclusion that the applicant committed attempted theft of four bottles of champagne, three bottles of Perrier water and two beverage glasses is rejected. The applicant has steadfastly maintained her innocence both at the time the offense was allegedly committed and at every questioning since. The DGE produced only the written report of the incident, not its author. Hence the applicant had no opportunity to confront the person she contends misconstrued her purported confession. The applicant's assertion that she did not "confess" to her unlawful conduct is supported by the eviction notice attached to the security report. The applicant refused to sign the eviction form

as requested by the security officers. Her refusal is not mentioned in the incident report. Had she "confessed" as stated in the report, there would have been no basis for her refusal to sign.

2. This incident aside, the applicant has established her trustworthiness in many other situations. Prior to her dismissal from Playboy, she voluntarily returned hundreds of dollars of chips accidentally left behind by a patron whose room she was cleaning. Moreover, the applicant's work record as a dealer was satisfactory. She apparently handled both money and chips without incident. Her recent job termination for absenteeism following surgery is immaterial.

3. Upon analysis of the criteria contained in N.J.S.A. 5:12-90(h), the Commission finds that the applicant has demonstrated her rehabilitation from the disqualifying offense of theft by deception. More than five years have elapsed since the last offense. The applicant's financial situation appears to have precluded voluntary repayment despite her advancement to dealer. The applicant's work record in the industry since the offense has been satisfactory and is not prejudiced by her recent termination for absenteeism. As stipulated by the parties at the Commission's public meeting, the applicant has repaid the entire amount of illegally received unemployment benefits through an offset of benefits she was recently entitled to obtain. Additionally, she is repaying the outstanding interest and fine at the rate of $50 per month.

4. Given the significant overlap on the issues of rehabilitation and good character, honesty

and integrity, and in consideration of the favorable character witness and references, the Commission finds that the applicant has established her good character, honesty and integrity by clear and convincing evidence.

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated herein.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8826-88

AGENCY DKT. NO. 89-EA-137

IRIS D. LABOY,

Petitioner,

v.

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

Respondent.

Iris D. Laboy, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 21, 1989 Decided: August 17, 1989

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission, objecting to the renewal of the casino employee license of the petitioner, Iris D. Laboy. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on December 5, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on February 16, 1989, and at that time the parties agreed that the issues in this matter are:

1. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4 (theft of an amount over $500.00).

2. Whether the petitioner's continued licensure is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c, because she had allegedly committed a criminal violation while employed by Playboy Hotel and Casino, now known as the Atlantis Hotel and Casino, despite the fact that such action was not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

3. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

4. Whether petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing in the matter was originally scheduled for April 25, 1989, and was adjourned at the request of the undersigned because of a personal family emergency. The matter was rescheduled and the hearing took place on July 6, 1989, at the Dover Township Municipal Building in Toms River, New Jersey. At the request of the petitioner, I kept the record open until July 21, 1989, in order to give her an opportunity to submit letters relating to her good character, honesty and integrity. I received letters from Ms. Laboy on that date and the record closed on July 21, 1989.

FACTUAL FINDINGS

Ms. Laboy's initial employment in the casino industry was at Bally's Park Place Hotel and Casino where she worked for approximately six months, starting in 1979. Ms. Laboy quit this job in order to move to Massachusetts with her husband.

In 1982, Ms. Laboy got a job with Playboy Hotel and Casino (later known as Atlantis Hotel and Casino) (Playboy) and worked there as housekeeper and then as a bar porter until she was fired on October 25, 1983 (R-3). The casino fired her when small bottles of Perrier water, small bottles of champagne and some glasses were found in her gym bag.

In May 1984, Ms. Laboy started to work as a steward (dishwasher) at Trump Plaza Hotel and Casino (Trump Plaza).* When she started this job, the petitioner was collecting unemployment benefits, and she had left her husband. Because she needed money to support herself and her children and since she would not be paid for the first two weeks of her employment with Trump Plaza, Ms. Laboy did not notify the unemployment compensation office about the job. In fact, she delayed reporting her employment until she felt settled in her position.

Thereafter, the Division of Unemployment and Disability Insurance, State Department of Labor (UDI Division) determined that Ms. Laboy had improperly collected unemployment benefits for the period between May 7, 1984 and June 11, 1984, and a judgment was filed against the petitioner for the amount of $1,376.68 ($1,185.00 in overpayments and the balance in interest and penalties) (R-1). The current balance on this indebtedness is about $1000.00.

Ms. Laboy continued to work at Trump Plaza until March 1985, when she quit to take a position with Trump Castle Hotel and Casino (Trump Castle). Ms. Laboy was employed by Trump Castle until April 14, 1989, at which time she was fired due to poor attendance. Apparently, Trump Castle has established a maximum number of absences that a person can accumulate within a period of time. Ms. Laboy exceeded this number since she was absent after surgery. At the time her employment was terminated, Ms. Laboy was working as a blackjack dealer.

Currently, Ms. Laboy is unemployed and although she qualifies for unemployment benefits, her benefits will be withheld until she repays the full amount of her 1984 indebtedness (P-1).

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* At the hearing, the petitioner identified her employer as Harrah's Trump Plaza (1T11), and she stated that she was employed by the Harrah's Corporation, which for a period of time had an interest in the Trump Plaza.

According to Ms. Laboy, when she left her husband she moved back to the family home in Manahawkin. Ms. Laboy found that the house needed extensive repairs and that a substantial amount of back taxes had to be paid to avoid foreclosure. Until recently, she has been the only person paying for the upkeep of the family residence. According to Ms. Laboy, she is now asking the other persons living in the house to help contribute to its upkeep.

Ms. Laboy stated that she was aware that it was improper for her to collect unemployment benefits while working but she did it since she need the money to support her family and for her travel expenses to Atlantic City. Notwithstanding the fact that she had continuous employment from 1984 through 1989, Ms. Laboy made no attempt to repay the 1984 indebtedness.

Ms. Laboy is now 33 years old, and she supports three children, her two natural children and a third child. This third child's mother takes drugs and has agreed to allow Ms. Laboy to raise her child. Ms. Laboy has legal custody and is planning to adopt this child.

Michele R. Sanders, petitioner's sister, testified that the petitioner has helped her by lending her money to return to New Jersey. Ms. Sanders stated that Ms. Laboy is having and has had financial difficulties. Ms. Sanders confirmed that Ms. Laboy took in a child to live with her since she was concerned about the child's welfare. Additionally, Ms. Laboy presented a number of letters regarding her good character, honesty and integrity from several friends: Wendalyn Warren, Brenda Gordon (her sister), Joseph Mills (her step-father), Josephine Lawrence, Joseph E. Sanders, Miriam E. Martin, Pearl Lewandowski (P-2). Also, Ms. Laboy presented a letter from David Ferber, who was a guest at Playboy, when the petitioner was employed there (P-3). Mr. Ferber stated that he left several hundred dollars in chips in his room, and that the petitioner, who entered his room to clean it, brought the matter to his attention. According to Mr. Ferber, he was impressed with Ms. Laboy's concern, he wrote a letter to Playboy commending her honesty, and has kept in touch with her over the years.

I **FIND** that the facts in this matter are not in dispute, except for the question of whether or not Ms. Laboy took the items on October 25, 1983. The petitioner stated that she did not steal these items; however, she could not explain how they got into her gym bag. It was the petitioner's practice to take her gym bag with her when she went to

work as a bar porter, and she kept it near her work station. According to Ms. Laboy, her immediate supervisor did not like her, and on the day of the incident, Ms. Laboy's gym bag was unattended when she left her work area to take away some empty bottles. After she was fired, Ms. Laboy stated that her union representative indicated that she had a good case and suggested that she ask for arbitration. Ms. Laboy decided not to pursue the matter. On cross-examination, Ms. Laboy stated that she did not recall whether she ever admitted taking these items. In the incident report prepared by Playboy's security office, it is stated that the beverage manager found four small bottles of Paul Masson champagne, three bottles of Perrier water and two beverage glasses in Ms. Laboy's duffle bag, that she admitted taking these articles, and that she said she was sorry about the incident (R-3). Based on my review of the testimony regarding this incident, I **FIND** Ms. Laboy's testimony not to be persuasive and she did place these items into her gym-duffle bag with the intent to take them.

CONCLUSIONS OF LAW

On behalf of the Division, Deputy Attorney General Ralph L. Fusco argued that the petitioner obtained an overpayment of unemployment benefits by failing to report her earned income. Although no criminal action was taken against the petitioner, Mr. Fusco argued that the petitioner's action is analogous to theft by deception, in excess of $500.00, a violation of N.J.S.A. 2C:20-4, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), even though no criminal action was initiated against the petitioner, as permitted by N.J.S.A. 5:12-86g.

Further, Mr. Fusco argued that the Division has shown that Ms. Laboy stole certain items while employed by Playboy in 1983. Although no criminal action was taken against the petitioner, Mr. Fusco argued that the petitioner's action is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2). Further, Mr. Fusco argued that because of these criminal activities, the petitioner cannot show by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b. Lastly, Mr. Fusco argued that the petitioner has not presented any facts to show her rehabilitation pursuant to N.J.S.A. 5:12-90h.

On her own behalf, Ms. Laboy indicated that she is now older and more mature and that she would never again attempt to get unemployment compensation benefits while

employed. Ms. Laboy stressed that she only concealed her employment since she needed the money in order to provide for herself and her family. Further, Ms. Laboy stated that she would have repaid the unemployment compensation judgment earlier; however, she forgot about the debt since no reminders were sent to her and because she had other bills to pay. Lastly, Ms. Laboy stated that she wants to retain her casino employee license so that she can continue to find employment in the casino industry and that she prefers to work rather than collect unemployment benefits or go on welfare.

Having reviewed the facts and the arguments of the parties, I **CONCLUDE** that the Division has shown an overpayment of unemployment benefits to the petitioner due to her misrepresentation and that her action is analogous to theft by deception, which is a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1).

Since the Division has established a statutory disqualifier, the next issue is whether or not the petitioner has shown that she has been rehabilitated. N.J.S.A. 5:12-90h sets forth certain standards to be considered in order to determine whether or not a person has been rehabilitated for purposes of obtaining a casino employee license. These standards are:

> (1) The nature and duties of the position applied for;
>
> (2) The nature and seriousness of the offense or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the applicant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense or conduct;
>
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90h]

Ms. Laboy was approximately 28 years when she misrepresented her employment status in order to improperly obtain unemployment benefits. This was not an isolated event since about one year prior to this misrepresentation, she had attempted to steal some items from Playboy. Since these events there has been no significant changes in Ms. Laboy's lifestyle. I recognize that Ms. Laboy has obviously worked hard in order to advance within the casino industry from steward to her last position as a blackjack dealer. Additionally, Ms. Laboy is now in the process of adopting a child. Although the petitioner is to be commended for her efforts to obtain a better job and to provide a good home for the child she is adopting, these facts alone are not sufficient to establish rehabilitation. Therefore, I **CONCLUDE** that the petitioner at this time has not shown by clear and convincing evidence her rehabilitation.

The next issue is Mr. Fusco's argument that Ms. Laboy's conduct while employed by Playboy is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c2. In order to make this determination it is necessary to consider the circumstances underlying the incident as well as the respondent's subsequent conduct, i.e., her rehabilitation. Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, 10 N.J.A.R. 244 (1979). Based upon the criteria set forth in N.J.S.A. 5:12-90h, I have already concluded that the petitioner has not shown her rehabilitation and therefore, I **CONCLUDE** that the Division has shown that the petitioner's 1983 action, attempted thief of property on the premises of a casino, constitutes an inimical offense pursuant to the provisions of N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Lastly, based on the facts in this matter, I **CONCLUDE** that at present, Ms. Laboy cannot establish her good character, honesty and integrity by clear and convincing evidence as required for licensure pursuant to N.J.S.A. 5:12-90b.

Therefore, I ORDER that Ms. Laboy's application for the renewal of her casino employee license be **DENIED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSI** for consideration.

August 17, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

8/18/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1989
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

caj/e

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Receipt given to Iris D. Laboy indicating that $258.00, her unemployment benefit payment, was used to offset the amount she owes because of the prior judgment, dated June 17, 1989

P-2 Several letters received from Iris D. Laboy on July 21, 1989

For the Respondent:

R-1 Information regarding the overpayment of unemployment benefits to Iris D. Laboy

R-2 Employee License Renewal Application submitted by Iris D. Laboy

R-3 Incident Report involving Iris D. Laboy prepared by an employee of Playboy Hotel and Casino, dated October 25, 1983

WITNESSES:

For the Petitioner:

Iris D. Laboy
Michele R. Sanders

For the Respondent:

Iris D. Laboy

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-189
LICENSE NO. 51836-21
OAL DOCKET NO. CCC 9003-88
ORDER NO. 89-29-17

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
BRIAN C. LEWIS

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 19, 1989,

IT IS on this 21st day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9003-88
AGENCY DKT. NO. 89-EA-189

BRIAN C. LEWIS,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Scott N. Silver, Esq. (Dilworth, Paxson, Kalish and Kauffman, attorneys) and **Harry J. Levin,** Esq., for petitioner

Charles F. Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 1, 1989 Decided: June 15, 1989

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Brian C. Lewis (petitioner) for renewal of his casino employee license. By letter report to the Casino Control Commission dated October 4, 1988, the Division of Gaming Enforcement objected to the renewal of licensure. The basis for the objection was the petitioner's conviction upon a plea of guilty on September 21, 1987, to charges of unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5d and arson, contrary to N.J.S.A. 2C:17-1b. These are the issues:

(1) Has the petitioner been convicted of arson, contrary to N.J.S.A. 2C:17-1b, which would be a disqualifier from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.)?

(2) Has the petitioner, if he has been convicted of an otherwise disqualifying offense, established his rehabilitation by clear and convincing evidence, pursuant to section 90h of the Act?

(3) Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act?

PROCEDURAL HISTORY

By letter dated December 7, 1988, the Casino Control Commission acknowledged receipt of the petitioner's request for a hearing on his renewal application. On December 12, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on February 28, 1989. The hearing was thereafter held on April 21, 1989, at the Office of Administrative Law, Atlantic City, New Jersey. At the request of the Division of Gaming Enforcement, the record remained open for ten days following the hearing to permit the Division to review the report of Dr. Michael Saynisch of the Atlantic Mental Health Center (Exhibit P-1, pp. 21 through 24) and then raise any objection which it might have. No objection to the document was raised by the Division and the record in this matter closed on May 1, 1989.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner resides in Atlantic City, New Jersey, with his wife and daughter. He is 30 years old. The petitioner was issued casino employee license number 51836-21 in June 1984. At the time of the hearing in this matter, the petitioner had been employed by the Atlantis Casino Hotel since November 1987 as a computer programmer. In August 1988, he was promoted to lead programmer.

Between 1976 and 1979, the petitioner served in the National Guard and the United States Army. After completing airborne and aircraft maintenance schools,

the petitioner served with the Army in Korea. He married his wife while stationed there. On November 21, 1979, the petitioner was discharged from the Army under honorable conditions (Exhibit P-1, p. 30).

Upon his return to the United States, the petitioner worked at Southern Jersey Airways until March 1980. At that time, he had a serious work-related injury and was on disability for about eight months. The petitioner testified that he was then laid-off after he returned to work and was unemployed for about one and one-half years. Because he had an interest in computers, the Division of Vocational Rehabilitation sent him to a nine-month computer programming course at the Taylor Business Institute. On September 1, 1982, the petitioner was awarded a diploma as a computer programming specialist (Exhibit P-1, p. 29).

While the petitioner was receiving training, he also worked at more than one job. One of his employers was Radio Shack and he continued with this employment after receiving his computer training. In 1984, the petitioner was promoted by Radio Shack to the position of computer customer service representative. The petitioner's wife was also employed during this entire period, having worked at Harrah's Casino Hotel since 1980.

It was the petitioner's testimony that he decided in June 1984 to become involved in the casino industry. He obtained his casino employee license and was hired at the Tropicana as a pit clerk. It was his wish to move into the casino's data processing area. However, a position was not created for him and he quit work at the Tropicana when he was asked to work on Christmas day 1984. The petitioner then returned to work for Radio Shack, eventually managing the company's store in Somers Point. At the same time, the petitioner did computer consulting work, for about 20 hours per week.

The petitioner testified that he left his job with Radio Shack in January 1986 after increasing the store's business 150 percent. He took a job with Crown Carpet, a company to which he had sold computer equipment. During this time, the petitioner also briefly held a job at the Sands Casino as a change person. When he was not quickly moved to a dealer position, he left the job. Around Easter 1986, the petitioner was hired at Bally's Casino as a dealer. According to the petitioner, he would work all day with the computers at Crown Carpet and then would work four nights a week at Bally's.

It was the sincere and credible testimony of the petitioner that all of his hours of work meant that he saw very little of his wife and communications between them stopped. In December 1986, the petitioner did not renew his contract at Crown Carpet. He was still working as a dealer at Bally's and he tried to keep his consulting business alive. In January 1987, the petitioner and his brother worked on setting up a mail order computer business. His daytime work hours were spent in his business office and during his evenings, the petitioner worked at Bally's.

The petitioner testified that upon leaving Crown Carpet, his income decreased. To aggravate the situation, the efforts to establish a computer business increased his expenditures. According to the petitioner, he and his wife began to argue about paying the bills. In March 1987, the petitioner left his home with the intention of not returning. The petitioner stayed in the home of a friend with whom he worked at Bally's.

After being away from his home for a week or two, the petitioner talked with his wife. He returned home for about five days. However, it did not work out and the petitioner felt there was nothing for him there, so he moved back in with his friend and developed a relationship with her.

During this time, the petitioner's brother tried to keep their business going. Deciding that he wanted to return to his wife and daughter, the petitioner left his job at Bally's in June 1987. By leaving Bally's, the petitioner intended to no longer come into contact with his friend with whom he had a relationship.

The petitioner was hired by Trump's Castle Casino Hotel as a security guard. On July 4, 1987, the petitioner went to work, with the possibility of working overtime. However, he did not work overtime. It was the petitioner's testimony that he instead visited his friend from Bally's, which was an upsetting event. The petitioner stated that he then went home and also was angry with his wife, blaming her for the problems he was experiencing. The petitioner then took a kitchen knife and drove away from the home in his truck.

It was the petitioner's testimony that he stopped and made a call to his brother to say goodbye. He then drove to a deserted area in Atlantic County and cut his wrist with the knife and set his truck on fire. The petitioner explained that it was not his intention to harm anyone other than himself. He testified that "the best way to get rid of all my problems was to just not have me around any more." Early on the

morning of July 5, 1987, the Hamilton Township police found the petitioner wandering away from his heavily burned vehicle and he was taken to the Mainland Medical Center in Pomona where he was treated for his self-inflicted injuries (Exhibit P-1, p. 1).

After being treated at the hospital, the petitioner was charged by the New Jersey State Police with arson, contrary to N.J.S.A. 2C:17-1b (Exhibit P-1, p. 3). After spending one night at Ancora, the petitioner was admitted to the Atlantic City Medical Center for a week of psychiatric evaluation. The medical center discharge summary (Exhibit P-1, pp. 13 and 14) stated that the petitioner had no past psychiatric history and no history of drug or alcohol abuse. His admission diagnosis was "depression with suicidal ideation." In addition to the suicide attempt, the discharge diagnosis was "adjustment disorder with depressed mood." The petitioner was described as being in stable condition at the time of his discharge.

The petitioner testified that upon leaving the hospital he sought help from the Atlantic Mental Health Center. He became a client of the center and began receiving counseling. On July 28, 1987, the Grand Jury for Atlantic County entered an indictment against the petitioner (Exhibit P-1, pp. 4 through 6) charging him with possession of a weapon and aggravated arson, contrary to N.J.S.A. 2C:39-5(d) and N.J.S.A. 2C:17-1a(2). On September 21, 1987, the petitioner entered a plea of guilty to the charge of unlawful possession of a weapon and to the amended charge of arson in the third degree, contrary to N.J.S.A. 2C:17-1b.

On October 14, 1987, the petitioner was sentenced to probation for five years on the arson conviction and a concurrent probation of eighteen months on the weapons conviction. A total of $60 was to be paid to the Violent Crimes Compensation Board and restitution in an amount to be determined was to be paid over the course of his probation. The petitioner was also sentenced to attend and complete mental health counseling (Exhibit P-1, pp. 8 through 10 and 15 through 20).

By letter dated October 14, 1988 (Exhibit P-1, p. 28), Probation Officer Lynnaye Smith reported that the petitioner had successfully completed his stipulated counseling through the Atlantic Mental Health Center. She noted that the petitioner had been consistent with his reporting requirements and was complying with all conditions of his probation. Noting that the petitioner had approximately four years left on his probation term, Ms. Smith suggested an early termination of probation if the petitioner continued his progress. By a letter dated April 17, 1989

(Exhibit P-1, p. 27), Probation Officer Smith stated that the petitioner had reported as directed, and had completed his therapy. All fines and penalties had been paid in full. She further stated that if the petitioner remained law-abiding, his probation could terminate in April 1990.

A psychological evaluation of the petitioner was admitted into evidence as Exhibit P-1, pp. 22 through 24. Dr. Michael Saynisch of the Atlantic Mental Health Center stated that the petitioner's diagnosis in July 1987 had been "adjustment disorder with depressed mood (DSM III 309.00)." According to Dr. Saynisch, this diagnosis indicated a maladaptive reaction to an identifiable stressor. The disturbance would remit when the stressor was removed. The petitioner satisfied his therapeutic counseling requirement at the Atlantic Mental Health Center. Dr. Saynisch thereafter tested the petitioner and completed his psychological evaluation in March 1989. These are his results and recommendations:

> As noted, Mr. Lewis does appear to be functioning well within normal limits at this time. His reality contact and judgment are good, he does not appear depressed, and he appears capable of handling stress should it occur. He reports that he is functioning very well at work and has begun to resolve his personal life. Contact with his probation officer indicates that his arrest and conviction was an isolated event.
>
> Based on my therapeutic involvement with Mr.Lewis subsequent to his suicide attempt, it would appear that the events that led to his arrest and conviction were the result of a situational depression rather than any criminal intent. Rather than indicate a defect in his character, honestly [sic] , or integrity, I would suggest that the events that led to his arrest and conviction were isolated maladaptive behaviors in reaction to identifiable stressors. And that, furthermore, these maladaptive behaviors were injurious only to Mr. Lewis. I would recommend that his behaviors be viewed in this light.

Following his arrest, the petitioner took a part-time job as a salesman in a shoe store, and looked for a better job. As noted previously, he was hired as a computer programmer at the Atlantis Casino Hotel in November 1987. In March 1988, he and his wife began to talk seriously about the status of their marriage. In April 1988, they decided that they did not want to divorce and the petitioner's wife and daughter moved in with him. It was the petitioner's sincere and credible testimony that his family relationship is now stronger than it ever was before. He and his wife have been through difficulties which they have handled and they would like to have another child. The petitioner stated that he is optimistic and that things are much better than they were before.

Having been promoted to lead programmer at Atlantis, the petitioner assists other programmers and users of computers. The petitioner runs computer programs and tracks information which must be kept in accordance with casino regulations. He also set up a program to track information concerning transactions in excess of $10,000. A letter from the Atlantis Finance Vice-President and Controller, R. Bruce McKee was admitted into evidence as exhibit P-1, page 25. According to Mr. McKee, the petitioner has contributed significantly to the data processing functioning at the casino and has been an exemplary employee. He described the petitioner's personal difficulties in 1987 as an aberration and not an indication of the petitioner's long-term overall good character and integrity.

Atlantis Director of Data Processing Joseph C. Montagnino testified on the petitioner's behalf. According to Mr. Montagnino, the petitioner's casino, finance and computer system experience has resulted in excellent work performance. The witness also noted that the petitioner has a good relationship with his co-workers. In a letter, dated December 5, 1988 (Exhibit P-1, page 26), Mr. Montagnino also noted that he has developed a good friendship with the petitioner. He feels that the petitioner has come out of the low period in his life in 1987 a stronger person.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Participation in casino operations as a licensee under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Pursuant to Sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c(1), the Casino

Control Commission shall deny licensure to any applicant who has been convicted of an offense specifically identified in the Casino Control Act as a disqualifier from licensure.

It is undisputed that the petitioner was convicted upon his plea of guilty on September 21, 1987, of the offense of arson, contrary to N.J.S.A. 2C:17-1b, a crime of the third degree. This offense is specifically listed under Section 86c(1) of the Casino Control Act as a disqualifier from licensure. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for renewal of a casino employee license on the basis of his conviction of a disqualifying offense.

Section 90h of the Act provides that the petitioner shall not be denied renewal of his casino employee license on the basis of his conviction, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) the date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervisions.

The respondent is now 30 years old. His conviction resulted from his attempt to commit suicide in July 1987. At the time, the petitioner was experiencing marital and financial problems and he was experiencing depression as a result of these stresses.

Because the petitioner's suicide attempt involved burning his vehicle and slashing his wrists with a knife, he was convicted of arson and possession of a

weapon. It is clear, however, that he was the significant victim of his own conduct. The petitioner sought counseling and satisfactorily completed a program of counseling pursuant to his probationary sentence. He is in contact with reality and now appears to be capable of handling stresses as they occur. The substantial improvements in his personal life clearly indicate the petitioner's progress.

The petitioner has had successful employment as a computer programmer and lead programmer with the Atlantis Casino Hotel. His supervisors have been more then pleased with his work and they have vouched for his stability. He has been a dedicated and responsible employee. The petitioner is optimistic about his future and he expects that his probation will be terminated early due to his satisfactory progress.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has been convicted of a disqualifying offense under Section 86c(1) of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of Section 90h of the Act. I also **CONCLUDE** on the basis of the credible evidence presented in this matter that the respondent has sustained his burden of establishing by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Brian C. Lewis for renewal of a casino employee license be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

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I hereby **FILE** this initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 15, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

6/15/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

6/20/89
DATE

OFFICE OF ADMINISTRATIVE LAW

lh

INVENTORY OF EXHIBITS

For the petitioner:

P-1 New Jersey State Police Investigation and Arrest Report (pages 1, 2 and 3)

Certified Indictment (pages 4-7)

Judgment of Conviction and Sentencing Worksheet (pages 8-11)

Medical Center Admission Record (pages 12, 13 and 14)

Sentencing Fact Sheet (pages 15-20)

Psychological Evaluation (pages 21-24)

Letters from Atlantis Casino Hotel (pages 25 and 26)

Letters from the Atlantic County Probation Department (pages 27 and 28)

Diplomas and Certificates (pages 29-36)

Fo. the respondent:

R-1 Certified Indictment

R-2 Certified Judgment of Conviction

WITNESSES

For the petitioner:

Brian C. Lewis
Joseph Montagnino

For the respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-31
APPLICATION NO. 26636-21
REGISTRATION NO. 22900-40
OAL DOCKET NO. CCC 6221-88
ORDER NO. 89-41-25

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF SAMUEL C. LINKSWILER

CORRECTED ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 22nd day of November 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this denial shall not affect Samuel C. Linkswiler's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly 1/6/89
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6221-88

AGENCY DKT. NO. 89-EA-31

SAMUEL LINKSWILER,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Gary Dinenberg, Esq., for the petitioner

Ralph L. Fusco, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 17, 1989 Decided: August 21, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Samuel Linkswiler, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack and craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

An Equal Opportunity Employer

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a blackjack and craps dealer in the casino industry. By letter to the Commission, dated July 7, 1988, the Division objected to the petitioner's application for licensure as a blackjack and craps dealer, asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on August 3, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated August 15, 1988, which was received by the Commission on August 16, 1988, the petitioner requested a hearing. On August 17, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on August 22, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Edgar R. Holmes on October 27, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-3 (N.J.S.A. 2C:20-4) in the third degree.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing in the matter was scheduled for January 5, 1989. On January 4, 1989, the petitioner's attorney contacted me and requested an adjournment as he was ill. This request for adjournment was granted, and the hearing was rescheduled. The hearing began on March 16, 1989, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey. The parties were unable to conclude the case that day, and the case was continued until June 16, 1989.

A second day of hearing was held on June 16, 1989, in the Office of Administrative Law, Atlantic County Civil Court House, Atlantic City, New Jersey. On June 19, 1989, my office received a telephone call from the deputy attorney general requesting leave to file a motion to reopen the case as the Division had just obtained new evidence relevant to the case. This request was granted, and the record was held open. Having not received a written motion, I telephoned the deputy attorney general on July 6, 1989, in order to determine the status of his motion. The deputy attorney general was not in his office that day, and I left a message for him to return my telephone call. Having not received a message from the deputy, I placed another telephone call to his office on July 17, 1989. At that time, the deputy informed me that the Division had reassessed its position, decided not to reopen its case, and decided to proceed with the case on the record as then established. As the Division withdrew its motion to reopen its case, the record closed at that time.

FACTUAL DISCUSSION

On October 12, 1981, the petitioner, Samuel Linkswiler, became employed at the Atlantic City Medical Center - Mainland Medical Division (ACMC) as a floor waxer. The petitioner became employed at ACMC using the name of Michael E. Nelsen. His identification card (R-2) and his Social Security card (R-1) both identify the petitioner as Michael Nelsen.

Michael E. Nelsen is the petitioner's deceased cousin. The petitioner first obtained Michael Nelsen's birth certificate from his aunt. He later obtained a duplicate birth certificate from the state on September 1, 1981 (R-16, P-1). The petitioner used the birth certificate to obtain the Social Security card. The Social Security account number issued to the petitioner under the name of Michael Nelsen is 338-50-5930 (R-1). The petitioner was fired from the ACMC on February 15, 1982, and he filed a claim for unemployment benefits with the Division of Unemployment and Disability Insurance under the name of Michael Nelsen on January 26, 1982 (R-3).

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On June 24, 1982, the petitioner became employed at the Sands Hotel and Casino as a blackjack and craps dealer under the name of Samuel Linkswiler and using his own Social Security number of 120-46-8100 (R-8).

The petitioner collected unemployment benefits for four weeks while still employed at ACMC and for 14 weeks while employed at the Sands (R-3, R-7, R-8, & R-11). During these periods the petitioner earned $841.73 while employed at ACMC (R-3 & R-7), and $6,884.50 while employed at the Sands (R-7 & R-8). Because the petitioner failed to notify his local unemployment office of his employment, he received unemployment benefits to which he was not entitled in the amount of $2,430.00 (R-7).

On February 6, 1984, the Department of Labor notified the petitioner that it would be conducting a hearing on February 13, 1984, concerning the unemployment benefits he had received from January 26, 1982 through October 2, 1982, while the petitioner had been employed (R-9). The petitioner attended the hearing and admitted that he had received unemployment benefits while employed at ACMC and the Sands (R-10). The Department of Labor thereafter made a determination in the case based on the record. On March 2, 1984, the Department determined that the petitioner had received unemployment benefits in the amount of $2,430.00, which he was not entitled to receive, and it imposed a fine of $360.00 for a total claim of $2,790.00 (R-7). The Department then filed a Certificate of Debt for $2,790.00 in the Superior Court of New Jersey on April 2, 1984, and a judgment was entered and docketed on April 13, 1984 (R-6). On March 7, 1984, the Division of Unemployment and Disability Insurance referred the case to the Division of Criminal Justice for possible prosecution (R-12). A criminal complaint was filed in the matter, and the petitioner was charged with theft by deception in violation of N.J.S.A. 2C:20-4 (R-13). On June 3, 1985, the petitioner pleaded guilty to the charge reduced to the fourth degree in Atlantic City Municipal Court, was fined $50, was ordered to make restitution and to pay $25 in court costs, and $25 to the Violent Crimes Compensation Board (P-2).

In 1984, the petitioner began repaying the debt at a rate of $100 per month. On September 10, 1984, the petitioner filed a petition for bankruptcy. He continued however to repay the unemployment debt through February 1985. On March 6, 1985, the petitioner amended his bankruptcy petition to include the balance of his unemployment insurance debt. As a result of the bankruptcy petition, the municipal court suspended its restitution order (P-2). As a result of the bankruptcy petition, the petitioner has never repaid $1,737.00.

When questioned regarding the incident by Division Agent Smolinski, the petitioner told Agent Smolinski that when Samuel Linkswiler was working Michael Nelsen was not, therefore Michael Nelsen was entitled to receive unemployment benefits. When Michael Nelsen was working and Samuel Linkswiler was not, then Samuel Linkswiler was entitled to receive unemployment benefits. The petitioner told Agent Smolinski that he did not see anything wrong with that. In a subsequent interview, the petitioner told Agent Smolinski that he was collecting unemployment benefits because he thought he was entitled to them until either the benefits ran out or until he got his original job back. At the hearing, the petitioner denied making these statements and indicated that he thought it was wrong to collect unemployment under these circumstances.

The petitioner's criminal history record (R-14) and the Division's report filed with the Commission on February 20, 1982, regarding the petitioner's application for a non-gaming license (R-15) reflects that he was arrested:

a) in New York on November 3, 1969, for possession of a dangerous drug,

b) in New York on July 31, 1970, for burglary,

c) in New York on February 16, 1971, for robbery,

d) in New York on April 30, 1971, for burglary and resisting arrest,

e) at Ft. Holabird, Maryland on May 21, 1971, on an Army warrant,

f) in Virginia on September 9, 1971, on a New York bench warrant,

g) in Florida on January 14, 1976, for driving while intoxicated (the petitioner was convicted, fined $100, and his driver's license was suspended for 90 days),

h) in Florida on October 27, 1976, for battery (the petitioner was convicted and was fined),

i) in Florida on November 20, 1976, for driving while intoxicated,

j) in Tuckerton, New Jersey on March 11, 1981, for possession of a controlled dangerous substance, and

k) in Somers Point, New Jersey on July 10, 1983, for forgery with the intent to defraud.

At the first hearing, the petitioner denied ever having been arrested in New York, Virginia, or in Florida (other than for driving while intoxicated). He also denied being arrested in either Tuckerton or Somers Point. The petitioner admitted that he had been arrested on December 12, 1983, for assault and resisting arrest. He was involved in a fight in a bar in Atlantic City. He was subsequently convicted in municipal court of this offense. The petitioner subsequently admitted the Somers Point arrest, but did not remember having pleaded guilty to the resisting arrest charge. The petitioner also admitted having been arrested on July 31, 1987, and was charged with resisting arrest in a casino and gambling in a casino while a casino employee. The petitioner was convicted of the resisting arrest charge. The petitioner was fined $100 by the Commission for a violation of N.J.S.A. 5:12-100n. (The petitioner believes it is his constitutional right to gamble in a casino.)

At the second hearing, the petitioner admitted the prior arrests. He indicated that his previous attorney had told him that since the charges were processed under a youthful offender statute that he did not have to say anything about them. The petitioner submitted a letter from his former attorney dated April 17, 1972, corroborating his position.[1] In addition, at the second hearing on cross-examination, the petitioner admitted that he was arrested in Tuckerton for driving while under the influence and stated that his mother had left a controlled dangerous substance in his car.

Regarding the July 10, 1983 arrest in Somers Point, the petitioner was charged with resisting arrest, hindering apprehension and driving while intoxicated. The petitioner began drinking and then borrowed a car from his roommate, Brian Lott. He was subsequently involved in an accident, fled the scene, abandoned the vehicle several blocks away, and was thereafter apprehended by police, in the woods. The petitioner told the police he was Michael Nelsen and provided identification that he was Michael Nelsen. When Brian Lott was contacted by the police, he identified the petitioner as Samuel Linkswiler. The petitioner informed the Division investigator that he used Brian Lott's driver's license and that he was so drunk that he did not know what he was doing. On November 1, 1983, the petitioner pleaded guilty to these charges in Somers Point Municipal Court.

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1 I note that several of the offenses were committed after 1972, and that the petitioner discussed these convictions with the Division in 1982.

In 1981, the petitioner was employed as a floor sweeper at Harrah's. From June 24, 1982 until August 1, 1987, the petitioner was employed as a blackjack and craps dealer at the Sands. The petitioner had two disciplinary infractions while employed at the Sands. On June 17, 1983, he was suspended for eight days for dealing while intoxicated (R-5).[2] On August 17, 1984, he was counseled for reporting to work while intoxicated (R-4). From September 1987 through April 1988, the petitioner was unemployed. On May 9, 1988, the petitioner was hired as a dealer at Trump Plaza. He was terminated from his position on February 14, 1989. In late March or early April 1989, the petitioner became employed at the Showboat Hotel and Casino. He was terminated from this position on May 9, 1989.

With regard to his termination from the Trump Plaza, the petitioner testified that he went on a break, left the casino, went to a bar, drank a ginger ale, returned to the casino, and was dismissed for leaving the casino on a break. The second time the petitioner testified he indicated that someone had lost their money on a casino game and the petitioner wanted to give him some money. The petitioner did not want to give him the money on "the floor" so he went to Sabatini's to wait for him, and the petitioner ordered and drank a tonic with lime.

Keith G. Sadler, surveillance shift supervisor, Trump Plaza, testified that he and Officer Fasola were asked to conduct a surveillance of the petitioner by the assistant games shift supervisor. After being observing for one and one-half hours, the petitioner left the casino and went to Sabatini's Bar. The petitioner was followed by the two security officers. The petitioner was observed drinking from a glass. The petitioner then sat down at the bar next to Mr. Sadler and ordered "another drink." Mr. Sadler watched the bartender fill 2/3 to 3/4 of a glass with Smirnoff Vodka and top the glass off with seltzer. Mr. Linkswiler drank 2/3 of the drink and returned to the casino. The petitioner began dealing and was therafter relieved from his table. The petitioner was terminated from his position for violating company policy of leaving the casino while on duty and drinking while on duty (R-17 & R-18).

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[2] The petitioner denied being suspended at the Sands.

Petitioner testified that in September 1981, he and his wife lived with his mother and stepfather. In October 1981, his mother died. Two months later his wife left him, and they subsequently obtained a divorce. The petitioner began drinking heavily. In May 1982, his stepfather sold their house, and the petitioner had to move. The petitioner was in debt, drank a fifth to a quart of alcohol a day, and his life was in a state of turmoil. He testified that he began moving around and collected unemployment until late in 1983. On December 7, 1985, the petitioner married his present wife, and she had him stop drinking. He does, however, still have an occasional social drink. His finances are now stable, his bills are paid, and he owns a home. He is 36 years old, a high school graduate, and he states that his casino license is his whole career.

The petitioner submitted one letter in his behalf. James A. Argostino, games supervisor, Trump Plaza, wrote:

> I've known Junior (the petitioner) since May of 1988. Junior is employed as a dealer at Trump Plaza in Atlantic City. As a games supervisor at Trump Plaza, I've been impressed with Junior, not only as an employee, but as some (sic) I consider a friend as well. On the job, Junior performs in a very professional manner. He does his job with pride and integrity. He is always courteous and outgoing with our patrons, as well as with his fellow employees. Trump Plaza is a leader in the gaming industry. It's through the efforts of Junior, and people like him, that we maintain that position. [P-4]

Although the Division did attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. As a result of my observations during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I am skeptical of the petitioner's testimony. There were numerous inconsistencies in his testimony, and he changed his testimony several times. He denied being arrested at certain times and thereafter, admitted the arrests. While some were committed while he was a minor, others were not. On at least two different occasions he denied being arrested in Tuckerton, yet he subsequently stated the drugs found in his car belonged to his mother. At one point he could not recall specific incidents of alleged misconduct including the

1987 gambling in a casino and resisting arrest charge. At another point, he was able to testify in detail regarding the incident. With regard to the incident at the Trump Plaza, first he testified he ordered a ginger ale at Sabatini's. Later he testified he ordered a tonic with lime. He denied drinking an alcoholic beverage at Sabatini's yet Agent Sadler watched the bartender pour vodka into a glass, serve the petitioner, and watched the petitioner drink the vodka. At the first hearing, he testified that he obtained a Social Security card in the name of Michael Nelsen from the local Social Security Administration Office, yet at the second hearing he could not remember getting the Social Security card. As a result of these and other inconsistencies, I am extremely skeptical of the petitioner's testimony.

FINDINGS OF FACT

1. On October 12, 1981, the petitioner became employed at the Atlantic City Medical Center - Mainland Medical Division (ACMC) as a floor waxer. The petitioner became employed at ACMC using the name of Michael E. Nelsen and a Social Security number of 338-50-5930 issued to him under the name of Michael Nelson.

2. The petitioner was fired from the ACMC on February 15, 1982, and he filed a claim for unemployment benefits with the Division of Unemployment and Disability Insurance under the name of Michael Nelsen on January 26, 1982.

3. On June 24, 1982, the petitioner became employed at the Sands Hotel and Casino as a blackjack and craps dealer under the name of Samuel Linkswiler and using his own Social Security number of 120-46-8100.

4. The petitioner collected unemployment benefits for four weeks while still employed at ACMC and for 14 weeks while employed at the Sands. During these periods the petitioner earned $841.73 while employed at ACMC and $6,884.50 while employed at the Sands. Because the petitioner failed to notify his local unemployment office of his employment, he received unemployment benefits to which he was not entitled in the amount of $2,430.00.

5. On March 2, 1984, the Department of Labor determined that the petitioner had received unemployment benefits in the amount of $2,430.00, which he was not entitled to receive, and it imposed a fine of $360.00 for a total claim of $2,790.00. The Department then filed a Certificate of Debt for $2,790.00 in the Superior Court of New Jersey on April 2, 1984, and a judgment was entered and docketed on April 13, 1984.

6. On March 7, 1984, the Division of Unemployment and Disability Insurance referred the case to the Division of Criminal Justice for possible prosecution. A criminal complaint was filed in the matter, and the petitioner was charged with theft by deception in violation of N.J.S.A. 2C:20-4 (R-13). On June 3, 1985, the petitioner pleaded guilty to the charge reduced to the fourth degree in Atlantic City Municipal Court, was fined $50, was ordered to make restitution and to pay $25 in court costs, and $25 to the Violent Crimes Compensation Board.

7. In 1984, the petitioner began repaying the debt at a rate of $100 per month. On September 10, 1984, the petitioner filed a petition for bankruptcy. He continued however to repay the unemployment debt through February 1985. On March 6, 1985, the petitioner amended his bankruptcy petition to include the balance of his unemployment insurance debt. As a result of the bankruptcy petition, the municipal court suspended its restitution order. As a result of the bankruptcy petition, the petitioner has never repaid $1,737.00.

8. The petitioner was arrested:

   a) in New York on November 3, 1969, for possession of a dangerous drug,

   b) in New York on July 31, 1970, for burglary,

   c) in New York on February 16, 1971, for robbery,

   d) in New York on April 30, 1971, for burglary and resisting arrest,

   e) at Ft. Holabird, Maryland on May 21, 1971, on an Army warrant,

f) in Virginia on September 9, 1971, on a New York bench warrant,

g) in Florida on January 14, 1976, for driving while intoxicated (the petitioner was convicted, fined $100, and his driver's license was suspended for 90 days),

h) in Florida on October 27, 1976, for battery (the petitioner was convicted and was fined),

i) in Florida on November 20, 1976, for driving while intoxicated,

j) in Tuckerton, New Jersey on March 11, 1981, for possession of a controlled dangerous substance, and

k) in Somers Point, New Jersey on July 10, 1983, for forgery with the intent to defraud. He was charged with resisting arrest, hindering apprehension and driving while intoxicated (the petitioner was convicted).

l) in Atlantic City, New Jersey on December 12, 1983, for assault and resisting arrest (the petitioner was convicted).

m) in Atlantic City, New Jersey on July 31, 1987, for resisting arrest and gambling in a casino while a casino employee. (The petitioner was convicted of the resisting arrest charge and was fined $100 by the Commission for a violation of N.J.S.A. 5:12-100n.)

9. Regarding the July 10, 1983 arrest in Somers Point, the petitioner was charged with resisting arrest, hindering apprehension and driving while intoxicated. The petitioner began drinking and then borrowed a car from his roommate, Brian Lott. He was subsequently involved in an accident, fled the scene, abandoned the vehicle several blocks away, and was thereafter apprehended by police in the woods. The petitioner told the police he was Michael Nelsen and provided identification that he was Michael Nelsen.

10. In 1981, the petitioner was employed as a floor sweeper at Harrah's.

11. From June 24, 1982 until August 1, 1987, the petitioner was employed as a blackjack and craps dealer at the Sands. The petitioner had two disciplinary infractions while employed at the Sands. On June 17, 1983, he was suspended for eight days for dealing while intoxicated. On

August 17, 1984, he was counseled for reporting to work while intoxicated.

12. From September 1987 through April 1988, the petitioner was unemployed.

13. On May 9, 1988, the petitioner was hired as a dealer at Trump Plaza. He was terminated from his position on February 14, 1989, for violating company policy of leaving the casino while on duty and drinking while on duty.

14. In late March or early April 1989, the petitioner became employed at the Showboat Hotel and Casino. He was terminated from this position on May 9, 1989.

15. Petitioner testified that in September 1981, he and his wife lived with his mother and stepfather. In October 1981, his mother died. Two months later his wife left him, and they subsequently obtained a divorce. The petitioner began drinking heavily. In May 1982, his stepfather sold their house, and the petitioner had to move. The petitioner was in debt, drank a fifth to a quart of alcohol a day, and his life was in a state of turmoil.

16. On December 7, 1985, the petitioner married his present wife, and she had him stop drinking. He does, however, still have an occasional social drink. His finances are now stable, his bills are paid, and he owns a home.

17. He is 36 years old, a high school graduate, and he states that his casino license is his whole career.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

. . .

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State.

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of

> the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of $500 between January 26, 1982 and October 2, 1982, while he was employed by either the Atlantic City Medical Center or the Sand's Hotel and Casino constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under

> pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[3] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked — or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during his testimony, that he knowingly received unemployment benefits to which he was not entitled from the Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the position applied for;

2. The nature and seriousness of the offense or conduct;

---

3 N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

6. Whether the offense or conduct was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense or conduct;

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Linkswiler is a casino employee and is employed as a blackjack and craps dealer. As such, he has direct responsibilities for actual gaming activities and does have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, over a four-week period during which he was not employed in the casino industry and over a fourteen-week period during which he was employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. His mother died, his wife left him, and his stepfather sold their home. While these events do somewhat mitigate the seriousness of the offense, the petitioner's statements to Agent Smolenski that Mike Nelsen was entitled to receive unemployment benefits when Sam Linkswiler was not working and that Sam Linkswiler was entitled to receive unemployment when Mike Nelsen was not, evidences conscious fraud which makes this offense more serious.

Fourth, the petitioner's misconduct in this case occurred from the end of January 1982 until the beginning of October 1982, when it ceased.

Fifth, the petitioner was 29 years of age at the time of the offense. I do not believe that immaturity was a factor in this case.

The petitioner has numerous prior arrests and convictions and several subsequent arrests and convictions. In 1983, the petitioner attempted to use the name of Michael Nelsen to avoid responsibility for an accident he was involved in while he was intoxicated. His last offense in 1987 was committed in a casino. He gambled while employed by a casino in violation of the Casino Control Act, and he then resisted arrest.

Seventh, because of his mother's death, his wife leaving, and his stepfather's sale of their home, the petitioner's life was in a turmoil and he turned to alcohol.

Eighth, the petitioner has made few rehabilitative efforts. The petitioner has not sought any alcohol rehabilitation therapy. While he has worked in the casino industry, his work record appears to be poor. He has been disciplined several times for alcohol-related activities. While the petitioner has remarried, owns a home, and claims to be financially secure, he has failed to clearly demonstrate his acceptance of responsibility. In addition, he expressed little remorse for his prior misconduct.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Linkswiler was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License

Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is not readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment but did occur while employed in the casino industry, and the underlying circumstances do not mitigate the seriousness of the misconduct. In addition, the petitioner has not fully accepted responsibility for his misconduct nor regained control over his behavior. He has not performed well within the casino industry during the past several years, and has been involved in subsequent misconduct. One incident occurring in a casino. Accordingly, the petitioner has failed to establish that he presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has not earned the privilege of licensure. An examination of the whole person fails to clearly and convincingly establish that Mr. Linkswiler is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Samuel Linkswiler for the renewal of a casino employee license be **DENIED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 21, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/23/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 23 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Same as R-16

P-2 Division of Criminal Justice Case Tracking/Management Report, dated June 28, 1985

P-3 Letter of Nicholas Atlas, Esq., dated April 17, 1972

P-4 Letter of James A. Argostino, games supervisor, Trump Plaza Hotel and Casino

P-5 Complaint, dated July 31, 1987, and court disposition, dated December 4, 1987

For the Respondent:

R-1 Social Security Account Card issued to Michael E. Nelsen

R-2 Atlantic City Medical Center identification card issued to Michael E. Nelsen

R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Benefit Payment and Employment Record from Atlantic City Medical Center

R-4 Sands Hotel/Casino Employee Disciplinary Action Report, dated August 17, 1984

R-5 Sands Hotel/Casino Employee Disciplinary Action Report, dated June 17, 1983

R-6 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated April 2, 1984

R-7 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund on Unemployment Benefits and Imposition of Penalty Disqualification Because of Willful Misrepresentation, re: mailed March 2, 1984

R-8 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record from the Sands Hotel and Casino

R-9 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: Notice of Hearing, dated February 6, 1984

R-10 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: Record of Hearing, dated February 14, 1984

R-11 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Samuel Linkswiler, as of August 29, 1983

R-12 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Referral of Wage-Benefit Conflict for Criminal Prosecution, dated March 7, 1984

R-13 Complaint filed in Atlantic City Municipal Court

R-14 Request for Criminal History Record Information

R-15 Division of Gaming Enforcement letter, dated February 20, 1982

R-16 New Jersey State Department of Health birth certificate for Michael Erling Nelsen, issued September 1, 1981

R-17 Trump Plaza Surveillance Incident Report, dated February 18, 1989

R-18 Trump Plaza Notice of Unsatisfactory Performance/Misconduct, dated February 17, 1989

WITNESSES

FOR THE PETITIONER:

Samuel Linkswiler, the petitioner

FOR THE RESPONDENT:

Samuel Linkswiler, the petitioner

Agent Karen Smolenski, Division of Gaming Enforcement

Keith Sadler, surveillance shift supervisor, Trump Plaza Hotel and Casino

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-244
LICENSE NO. 18280-21
REGISTRATION NO. 13717-40
OAL DOCKET NO. CCC 105-89
ORDER NO. 89-43-13

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF OSCAR MARTINEZ

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 1, 1989,

IT IS on this 3rd day of November 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 105-89
AGENCY DKT. NO. 89-EA-244

OSCAR MARTINEZ,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Guy S. Michael, Esq., for petitioner (Brown & Michael, attorneys)
R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 24, 1989 **Decided: September 1, 1989**

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter, dated November 15, 1988, with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license no. 18280-21 issued to petitioner Oscar Martinez. The Division alleges, among other things, that petitioner failed to disclose material information on his employee license renewal application with regard to his criminal record of arrests and

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convictions contrary to N.J.S.A. 5:12-90b and, therefore, he lacks the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-89b(2).

PROCEDURAL ASPECTS

Subsequent to the Division having filed its objection letter with the Commission dated November 15, 1988, petitioner requested a hearing on December 28, 1988. On January 3, 1989, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 3, 1989 followed by a plenary hearing held on July 24, 1989, which was conducted at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was considered closed on July 24, 1989.

ISSUES

The issues to be determined by this administrative tribunal and as agreed upon by the parties at the prehearing conference, are these:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated by section 90b of the Casino Control Act?

B. Whether the petitioner, with specific reference to his record of arrests, has failed to reveal any facts material to qualification for his casino license within the meaning of section 86b and/or 90e?

FINDINGS OF FACT

Based upon the testimony and documentary evidence proffered at the hearing and having given fair wright thereto, I FIND the following FACTS in this matter:

Petitioner has applied for the renewal of his casino employee license no. 18280-21 which was originally issued to him on or about March 25, 1981. Petitioner, who is presently 27 years of age, completed the license renewal procedure in or

about 1983. This is his second license renewal application which represents his third application for a casino employee license. Petitioner is presently employed as a craps dealer by the Showboat Hotel and Casino.

On or about April 5, 1983, petitioner was arrested by the Egg Harbor Township, New Jersey police and charged with the possession and use of marijuana, a controlled dangerous substance (CDS) contrary to N.J.S.A. 24:21-20a. This arrest was addressed with regard to petitioner's 1983 license renewal application, therefore, it is not in issue in the instant matter.

On January 11, 1986, petitioner was arrested by the Atlantic City, New Jersey police and charged with the possession of CDS (marijuana), contrary to N.J.S.A. 24:21-20a 1. Twenty days later, on January 31, 1986, petitioner was again arrested by the Atlantic City police and charged with the possession of CDS (marijuana) under 25 grams contrary to N.J.S.A. 24:21-20a 4. Respondent was brought to trial on the second charge on February 11, 1986, where he was found guilty by the Municipal Court. Petitioner was sentenced to a $100 fine which was suspended, $25 in court costs which was also suspended and $25 to the Violent Crimes Compensation Board (VCCB).

On February 24, 1986, petitioner completed and signed his Employee License Renewal Application. He failed to disclose the January 11, 1986 and January 31, 1986 arrests, and the February 11, 1986 conviction on his application as required by questions 6 and 7 thereon. Question No. 6 asks:

> **Have you been arrested, taken into custody or indicted by any law enforcement authority for the alleged commission of a crime or other offense, including any high misdemeanor, felony, misdemeanor, or disorderly persons offense, in New Jersey or in any other state or jurisdiction since you were initially licensed or since your last license renewal?**

Petitioner placed an "X" in the answer box marked "No."

Question No. 7 asks:

> **Have you been convicted of a crime including a high misdemeanor, felony, misdemeanor, or disorderly persons**

> offense in New Jersey or any other State or jurisdiction since you were initially licensed or since your last license renewal?

Petitioner placed an "X" in the answer box marked "No" for this question.

Subsequently, on December 7, 1987, Agent Karen Molenski of the Division's Employee Licensing Section conducted a telephone interview with petitioner concerning petitioner's license renewal application. When Agent Molenski inquired of petitioner to clarify his answer to Question No. 6, petitioner responded that he had been arrested last year in Atlantic city for drunk driving. Petitioner denied any other arrests. Agent Molenski then read Question No. 6 to petitioner and asked him whether or not he understood the question. Petitioner responded that he understood what was being asked and stated that he had not been arrested since his drunk driving arrest. Agent Molenski then asked petitioner if he had been arrested since his last license renewal to which petitioner responded "No." When Agent Molenski informed petitioner that he had been arrested for the possession of marijuana under 25 grams, she followed with the question as to how many times petitioner had been arrested for such an offense. Petitioner answered, only once, only one time. When Agent Molenski asked petitioner whether he was certain he had only been arrested the one time for the possession of marijuana, petitioner responded that it was only once in 1981 (the arrest actually occurred in 1983).

Agent Molenski subsequently asked petitioner if he was arrested on January 11, 1986 in Atlantic City when he was observed by the police throwing a glassine envelope containing marijuana from a car at a police motor vehicle stop, and again on January 31, 1986 when Atlantic City police observed petitioner making a purchase of narcotics and later found him in possession of marijuana. Petitioner admitted to the two arrests and stated that he could not remember the exact dates. This was also his response when Agent Molenski asked petitioner why he was continuously dishonest in responding to her inquiries.

When Agent Molenski asked petitioner to relate the circumstances of the two 1986 arrests, his responses differed significantly from the facts and description of the events which appear on the Investigation Reports by the Atlantic City Police Department. In the first instance, petitioner stated that the police found a glassine envelope of marijuana on the ground by his motor vehicle which was stopped by the

police. Petitioner denied that he threw the marijuana from his automobile. With regard to the second arrest, petitioner stated to the Agent that he was driving with a friend whose name he could not recall and his friend made a purchase of marijuana. The two then drove to a 7-11 convenience store where they were stopped by Atlantic City Detectives. Petitioner was arrested. He stated to Agent Molenski that his friend had pushed the marijuana close to petitioner on the car's seat when the police arrived. The police report indicates, however, that the marijuana was found in petitioner's jacket pocket rather than on the car seat. In his testimony at the hearing, petitioner stated that he "...got a $10 bag" of marijuana and he was arrested when the police found "a $10 bag in my left top pocket."

DISCUSSION AND CONCLUSIONS

It is established that licensure under the Casino Control Act (Act) is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-1b(8). Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any ... offense or violation of this act which would disqualify such person from holding his license..."

The Division contends that petitioner's three arrests for the possession of CDS is proof that petitioner does not possess the good character, honesty and integrity required of a casino employee for licensure, pursuant to section 89b(2) of the Act. The Division also contends that petitioner's nondisclosure of his two arrests in January 1986 for the possession of CDS, violates the provisions of section 90b of the Act and is further proof of petitioner's lack of good character, honesty and integrity.

Petitioner testified, among other things, that he did not really understand the Division's questionnaire and, therefore, answered question numbers 6 and 7 by making a cross in the "No" box on the Employee License Renewal Application. Petitioner asserted that he believed the questions related to incidents before he was first fingerprinted because of the word "renewal." Petitioner also testified that at the time he completed the application in February 1986, he did not know the difference between an "arrest" and a "conviction." Petitioner conceded that he had

completed his original application for licensure and had also engaged in the license renewal process in 1981 without difficulty.

I **FIND** petitioner's reasons for his failure to disclose his two January 1986 arrests on his Employee License Renewal Application to be incredible. In re Perrone's Estate, 5 N.J. 514, 522 (1950).

I **CONCLUDE**, therefore, that petitioner, with specific references to his record of two arrests and one conviction for the possession of CDS, failed to disclose and reveal such facts on the Employee License Renewal Application subsequent to those events and, thus, is disqualified from holding a casino employee license. Paul v. Division of Gaming Enforcement, 2 N.J.A.R. 31 (1979).

As a consequence of petitioner's failure to disclose his criminal record history, as required on the Employee License Renewal Application and by section 89b(2) of the Act; he has failed to establish, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity for licensure as a casino employee. I so **FIND** and **CONCLUDE**. Millet v. Division of Gaming Enforcement, 8 N.J.A.R. 579, 586 (1986).

ORDER

Accordingly, is is **ORDERED** that the application of Oscar Martinez for the renewal of licensure as a casino employee be and is hereby **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1 September 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

9/1/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 8 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Oscar Martinez

For the Respondent:

Karen Molenski
Oscar Martinez

EXHIBIT LIST

For the Petitioner:

P-1 Investigative Report

For the Respondent:

R-1 Employee License Renewal Application
R-2 Police Report (2 pages)
R-3 Police Report (2 pages)
R-4 Exhibit 8

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-105
LICENSE NO. 05262-21
OAL DOCKET NO. CCC 8088-88
ORDER NO. 89-41-20

APPLICATIONS FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF CIRO MASSA

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Division of Gaming Enforcement (Division) having moved to reopen the matter of Ciro Massa's 1989 renewal application; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 13th day of November 1989, ORDERED that the Division's motion to reopen the 1989 renewal application is granted; and

IT IS FURTHER ORDERED that the initial decision is modified as follows:

to include consideration of the 1989 renewal application.

IT IS FURTHER ORDERED that the 1986 and 1989 renewal applications are denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Ciro Massa is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8088-88
AGENCY DKT. NO. 89-EA-105

CIRO MASSA,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Edward M. Thompson, Esq., for petitioner (Callaghan, D'Amico & Thompson, attorneys)

R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 12, 1989 Decided: August 29, 1989

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

The petitioner seeks renewal of his casino employee license, which would permit him to work as a blackjack dealer and floor person in a licensed casino. By letter report to the Casino Control Commission dated August 18, 1988, the Division of Gaming Enforcement objected to the renewal, based upon the petitioner's arrest on June 8, 1985, on charges of theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4 and filing a false police report, contrary to N.J.S.A. 2C:28-4. These are the issues:

1. Has the petitioner committed the offense of theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, thus disqualifying him from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct has not been prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Has the petitioner, if he has committed an otherwise disqualifying offense, affirmatively established by clear and convincing evidence his rehabilitation, pursuant to section 90h of the act.

3. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission dated October 20, 1988, the petitioner requested a hearing on his renewal application. On November 4, 1988, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Telephone prehearing conferences were thereafter held on January 31, February 17 and May 18, 1989. The hearing was held as scheduled on June 23, 1989, in Absecon, New Jersey. I subsequently determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on July 12, 1989.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner lives in Las Vegas, Nevada, with his 13 and 11-year-old sons. For two years, the petitioner has been employed at the Golden Nugget Casino in Las Vegas as a dealer in blackjack and craps. From October 1980 until April 1987, the petitioner was employed as a dealer and box person by the Golden Nugget Casino in Atlantic City, New Jersey.

Affidavits from two employees of the Las Vegas Golden Nugget Casino were admitted into evidence as Exhibits P-2 and P-3. Affiant Ronald R. Myers is a floor man. He stated that he has known the petitioner for eight years and that he considers the petitioner to possess the honesty and integrity needed for a casino employee. Affiant C. Craig Seaman is employed as a pit manager. He stated that he

has known the petitioner for two years. He also believes that the petitioner possesses the honesty and integrity needed for a casino employee.

Division of Gaming Enforcement Agent Duane K. Brooks testified that he conducted a background investigation concerning the petitioner's renewal application. This investigation revealed that the petitioner had an arrest which involved a stolen vehicle. From the Egg Harbor Township Police Department, Agent Brooks obtained an investigation report (Exhibit R-1) naming the petitioner as a suspect in the fraudulent reporting of a stolen vehicle. Specifically, the report indicates that the Egg Harbor Township Police were advised by the Mount Laurel Township Police on May 16, 1985, that they had recovered a vehicle which had been reported stolen on March 16, 1985. The Mount Laurel Police further advised that the vehicle had been recovered on March 8, 1985, prior to the vehicle being reported stolen.

Agent Brooks obtained additional documents concerning the allegations against the petitioner. In a supplementary investigation report dated May 26, 1985 (Exhibit R-2), Egg Harbor Township Patrolman Richard Vogt reported that the vehicle recovered by the Mount Laurel Police was a 1979 Datsun 280Z with a vehicle identification number matching that of the vehicle which the petitioner had reported stolen on March 16, 1985. Patrolman Vogt's report further stated that the Mount Laurel Police had been storing the vehicle since March 9, 1985. Patrolman Vogt reported his further investigation, which included his interview of Eddie Pressley, a claims handler for State Farm Insurance. Patrolman Vogt learned that the petitioner had filed an insurance claim on the stolen vehicle. By check dated April 30, 1985, the petitioner received $5,989.70 in settlement of his insurance claim (Exhibit R-11).

On June 5 , 1985, Patrolman Vogt signed a complaint against the petitioner charging him with filing a false police report, contrary to N.J.S.A. 2C:28-4, and theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4. The matter was then referred to the Atlantic County Prosecutor's office. The prosecutor dismissed the charge of theft by deception and returned the remaining matter to the Egg Harbor Township Municipal Court for disposition on the downgraded offense of obstructing the administration of law, contrary to N.J.S.A. 2C:29-1. Significantly, the prosecutor noted the availability and appropriateness of a civil remedy as explanation for dismissal of the charge of theft by deception. On August 26, 1985, the petitioner was found not guilty on the charge of obstructing the administration of law.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

The central factual dispute in this matter concerns whether the petitioner's car was actually stolen on the night of March 16, 1985. Testifying on his own behalf, the petitioner stated emphatically that he had nothing to do with the theft of his vehicle. He asserted that he drove his Datsun 280Z to a theater at the Shore Mall in Egg Harbor Township on the evening he reported it stolen. He believed the date was March 16, 1985. According to the petitioner, when he came out of the movie theater his car was gone. He then called a friend who gave him a ride to police headquarters, where he reported that his vehicle had been stolen.

An Egg Harbor Township Police Department Investigation Report (Exhibit R-5) dated March 16, 1985, reflects the petitioner's version of events. Patrolman Vogt accepted the petitioner's report that he had parked his vehicle outside the theater around 7:45 pm. When he came out of the theater around 9:45 pm, he could not locate his car. Patrolman Vogt's report indicates that the vehicle identifying information was entered into the National Crime Information Center Computer System to report the theft of the vehicle state and nationwide.

As noted previously, the Mount Laurel Township Police Department responded to the stolen vehicle report on May 16, 1985. On that date, Mount Laurel Detective Mike Dugan called Egg Harbor Sergeant Edward Jones to report that the vehicle had been recovered in Mount Laurel Township. Significantly, Sergeant Jones reported that Detective Dugan advised that the vehicle was recovered on March 8, 1985, prior to it having been reported stolen by its owner.

Patrolman Vogt recorded in a supplementary investigation report dated May 26, 1985 (Exhibit R-2) that he was told by Sergeant Jones that the Mount Laurel Police had recovered the vehicle on March 9, 1985. Detective Dugan filed a report on May 16, 1985 (Exhibit R-6), which noted his call to Egg Harbor Township to report recovery of the motor vehicle which had been reported stolen on March 16, 1985. Detective Dugan's report states that the vehicle was found partially stripped and hot wired on March 9, 1985.

A copy of the statewide report issued by the Mount Laurel Police Department concerning recovery of the stolen vehicle was admitted into evidence as Exhibit R-8. The notice, which identifies a Datsun 280Z with the same vehicle identification

number as that of the vehicle reported stolen by the petitioner, is dated March 9, 1985. Entitled "recovered stolen vehicle," the notice states:

> THIS AGENCY RECOVERED THE FOLLOWING VEHICLE THIS DATE ON CREEK RD NEAR NJTP & I-295 EXIT. VEHICLE BELIEVED TO BE STOLEN/FOUND PARTIALLY STRIPPED BUT OTHERWISE GOOD CONDITION NO TAGS OR OTHER ID. VEHICLE DEPOSITED AT THIS LOCATION SOME TIME SINCE 2400 HRS ON 03/08/85. NCIC NEG ON VIN.

An additional document indicates recovery of the stolen vehicle on March 9, 1985. A Mount Laurel Township Police Department Tow Report and Release of that date was admitted into evidence as Exhibit R-9. This report describes a Datsun 280Z with the same vehicle identification number discussed above. The report describes the vehicle as having been stolen and further states that it was towed by Flannagan's Tow Company.

Was the petitioner's car stolen on the night of March 16, 1985, as he reported? Resolution of this factual dispute hinges upon a credibility determination. A trier of fact may reject testimony because it is inherently incredible or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). The testimony of the appellant was not inherently incredible. On the other hand, as to this crucial factual aspect, the testimony did not sound a strong ring of truth. Of greater significance is the inability of the petitioner to offer any reasonable explanation for the major discrepancy between his version of events and that which was recorded in numerous police reports from two different police departments.

The police reports from Mount Laurel Township persuasively establish that the vehicle which the petitioner reported was stolen on March 16, 1985, was found in Mount Laurel Township on March 9, 1985, at a location where it was left sometime after 2400 hours on March 8, 1985. The Egg Harbor Township Police reports memorialize this information as received from the Mount Laurel Police. In addition, the Egg Harbor Police reports persuasively establish that the petitioner reported on the evening of March 16, 1985, that his vehicle had been stolen that very night. Obviously, the petitioner was not telling the truth then nor at the hearing when he said he drove the vehicle to the movies on the night of March 16 because the vehicle had been recovered a week earlier and was being held by the Mount Laurel Police Department. Thus, I further FIND as fact that the petitioner's car was not stolen on

the night of March 16, 1985, contrary to the petitioner's report to the Egg Harbor Township Police Department and contrary to his insurance claim.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. It the intention of the act to preclude the creation of any property right in any license permitted, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Among these qualifications is the requirement that an applicant for a casino employee license, or renewal of a casino employee license, must demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the act.

Section 90e of the act incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(1), the Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure. Under section 86g, licensure shall be denied to any applicant who has committed acts which would constitute any such specifically listed offense, even if such conduct has not or may not be prosecuted under the criminal laws of this state.

Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely creates or reinforces a false impression, prevents another from acquiring information which would affect his judgment of a transaction, or fails to correct a false impression which the deceiver previously created or reinforced. In the present matter, the petitioner falsely reported to the police and to his insurance carrier that his vehicle had been stolen on March 16, 1985. The date provided by the petitioner could not have been true since the vehicle had already been recovered a week earlier by another police department. It is fair to infer that the petitioner provided the false date with the intention of preventing the insurance carrier from acquiring information which would affect the carrier's disposition of his claim. Based on the information which he provided, the petitioner received an insurance payment of $5,989.70.

Based upon the foregoing facts and discussion, I **CONCLUDE** that the petitioner is guilty of theft, contrary to N.J.S.A. 2C:20-4, since he purposely obtained the property of another (his insurance carrier) by deception. Under N.J.S.A. 2C:20-2b(2), theft constitutes a crime of the third degree if the amount involved exceeds $500 but is less than $75,000. Thus, I further **CONCLUDE** that the petitioner has committed the offense by theft by deception in the third degree, which is an offense specifically listed under section 86c(1) of the Casino Control Act as a disqualifier from licensure.

Section 90h of the act provides that the petitioner shall not be denied renewal of a casino employee license on the basis of his otherwise disqualifying conduct, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Section 90h sets forth eight factors which should be considered in determining whether rehabilitation has been affirmatively demonstrated. These include the nature and duties of the position applied for; the nature and seriousness of the conduct; the circumstances under which it occurred, the date of the conduct and the applicant's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct. In this matter, a lengthy analysis of these factors is not necessary. It must be noted that the petitioner has no other record of arrests and he has apparently had no involvement with the criminal justice system since 1985. Normally this would be a substantial factor in support of rehabilitation from one aberrational incident. However, I have found that the petitioner did not testify truthfully at the hearing. Based upon that unfortunate circumstance, I must **CONCLUDE** that the petitioner has failed to establish his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the act. Based upon the same reasoning, I also **CONCLUDE** that the petitioner has failed to establish his good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ciro Massa for renewal of a casino employee license is **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

August 29, 1989
Date

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8/30/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 1 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Egg Harbor Township Police Department Property Report dated May 16, 1985

P-2 Affidavit of C. Craig Seaman

P-3 Affidavit of Ronald R. Myers

For the respondent:

R-1 Egg Harbor Township Police Department Supplementary Investigation Report dated May 16, 1985

R-2 Egg Harbor Township Police Department Supplementary Investigation Report dated May 26 and June 5, 1985

R-3 Criminal Complaint dated June 5, 1985

R-4 Egg Harbor Township Police Department Arrest Report dated June 8, 1985

R-5 Egg Harbor Township Police Department Investigation Report dated March 16, 1985

R-6 Mount Laurel Township Uniform Investigation Report dated May 16, 1985

R-7 Copy of Certificate of Ownership of a Motor Vehicle

R-8 Recovered stolen vehicle report dated March 9, 1985

R-9 Mount Laurel Township Police Department Tow Report and Release dated March 9, 1985

R-10 Transcribed interview dated April 16, 1985

R-11 Copy of insurance claim payment dated April 30, 1985

R-12 Report to Insurance Frauds Division, State of New Jersey Insurance Department, dated May 24, 1985

WITNESSES

For the petitioner:

Ciro Massa

For the respondent:

Duane Brooks

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-27
OAL DOCKET NO. CCC 6849-88
ORDER NO. 89-40-24

STATE OF NEW JERSEY, DEPARTMENT DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	ORDER
THOMAS J. MATASH AND GREATE BAY HOTEL AND CASINO, INC., t/a/ THE SANDS	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed, and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 11, 1989,

IT IS on this 6th day of November 1989, ORDERED that the initial decision is modified to find that Greate Bay Hotel and Casino, Inc. violated N.J.S.A. 5:12-102(b) in addition to N.J.S.A. 5:12-102(g); and

IT IS FURTHER ORDERED that no penalty is imposed for these violations.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6849-88
AGENCY DKT. NO. 89-27

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
THOMAS J. MATASH
AND GREATE BAY HOTEL
AND CASINO, INC. t/a
THE SANDS,
Respondents.

Frederick J. McDonough, Deputy Attorney General for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Roberto Rivera-Soto, Esq., for respondent

Record Closed: June 21, 1989 Decided: August 23, 1989

BEFORE **EDGAR R. HOLMES**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On July 12, 1988, the Division of Gaming Enforcement (Division) filed a complaint and application for a Cease and Desist Order with the Casino Control Commission (Commission), alleging that the respondent Thomas J. Matash

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conducted a junket to the respondent Sands while not licensed to do so, contrary to N.J.S.A. 5:12-102b and g.

On August 30, 1988, the Commission denied the request for a Cease and Desist Order and on September 20, 1988, transmitted the matter to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on December 12, 1988, at which time Matash failed to appear. A prehearing Order was issued on December 12, 1988, scheduling the matter for a plenary hearing on March 14, 1989. On January 12, 1989, a partial initial decision was issued in favor of the Division and against Matash for his failure to appear.

Because discovery was not completed in a timely fashion, the matter was not heard until April 20, 1989, and the record closed on June 21, 1989, upon receipt of briefs. The time to issue an initial decision was extended by Order of the Commission until August 29, 1989.

BACKGROUND

The Sands is a New Jersey casino licensee subject to the New Jersey Casino Control Act (Act), N.J.S.A. 5:12-1, et seq., including those relevant provisions governing the conduct of junkets under Section 102 of the Act, N.J.S.A. 5:12-102.

In January, 1988, various amendments to the junket provisions of the Casino Control Act were enacted. See L. 1987, c. 426, sec. 5, eff. Jan. 14, 1988. The amendments, among other things, upgraded the license requirements for junket representatives from the standard of a casino employee under Section 90 of the Act, to the higher standard of a casino key employee under Section 89 of the Act.

Recognizing the burden such "upgraded" license requirements would have on persons who already possessed either a temporary or plenary license as a junket representative, the Legislature provided for a measured transition. Persons who already had a plenary junket representative license could continue under their old license until the regularly scheduled renewal period, at which time they were

required to comply with the new standards, N.J.S.A. 5:12-102(o)(1). Persons who were temporarily licensed as junket representatives, but had yet to receive a plenary license, were required to file a completely new and "upgraded" application by April 13, 1988, (90 days after the effective date of the amendment) as a condition of maintaining their then-temporary junket representative license in force. N.J.S.A. 5:12-102(o)(2). Matash held a temporary junket representative license when the Act was amended. Matash, therefore, was under an obligation to file an "upgraded" application by April 13, 1988, in order to maintain his temporary license. Matash never filed the required application and, by operation of law, Matash's temporary junket representative license expired on April 13, 1988. N.J.S.A. 5:12-102(o)(2).

FACTS

The Commission accommodates its casino licensees by periodically sending to them an updated list of all properly licensed junket representatives and enterprises. The letter accompanying these lists reminds the casino licensee that it cannot engage a junket representative or enterprise whose name does not appear on the list. It directs the licensee to consult the list prior to engaging a representative or enterprise.

Sands employees relied upon these lists in the past to verify that junket representatives with whom they had an ongoing relationship were still licensed. In addition, Sands internal application procedures for junket representatives clearly indicated that the Sands relied upon these lists to verify licensure. This internal procedure was submitted to the Commission and had been approved by it.

Matash's name continued to appear on lists sent out by the Commission until May 21, 1988. On that date, the Commission sent a letter to the Sands enclosing lists of plenary and temporary junket representatives and enterprises. The lists, however, were dated April 6, 1988. Thomas Matash's name appears on the list.

It was not until June 6, 1988, that the Commission sent out a listing of all those persons who failed to file new applications and whose licenses consequently expired on April 18, 1988.

Matash, however, had obligated to conduct a junket to the Sands on May 5 and 6, 1988. Matash did not advise Sands that his license expired on April 18, 1988, despite the fact that Sands had written to him and other similarly situated junket representatives reminding them of their obligation to meet the April 18, 1988 deadline. On May 5, 1988, Matash brought his junket to the Sands Casino.

Detective James C. Gallagher of the New Jersey State Police, assigned to the Division, learned that Matash was being investigated by the FBI for illegal gambling. In early May of 1988, Gallagher picked up a monthly junket schedule from the Sands for the month of May. He noted that Matash was scheduled to bring in a junket on May 5 and 6, 1988. Gallagher did a computer check on the status of Matash's license. The computer erroneously listed Matash as an applicant for a license. (Matash had failed to apply by the April 18, 1988 deadline). Gallagher checked directly with the Commission staff. He then learned for the first time that Matash had not filed and therefore was unlicensed. Gallagher did not alert the Sands to this fact but decided to wait and see what developed. On May 5, 1988, Gallagher met Matash at the Sands and interviewed him briefly. Matash admitted that he was unlicensed and he also admitted that he failed to tell anyone at the Sands that he was unlicensed.

Again Gallagher did not tell anyone at the Sands about the license problem but decided to wait and see if there was any collusion between Sands and Matash. Gallagher never did find any evidence of collusion. Since Sands had voluntarily furnished him with Matash's name as a future junket representative, he should not have expected to find any collusion. While this is obvious, it is none the less hindsight.

Gallagher reported to his Supervisor the fact that Matash had conducted a junket to the Sands while not licensed to do so, and on May 12, 1988, a complaint was filed against Matash and the Sands for, respectively, conducting, and permitting, an unlicensed junket. On June 20, 1988, the affidavit of Gallagher for a Cease and Desist Order was filed.

LAW

Section 102 of the Casino Control Act requires junket representatives or enterprises to be licensed pursuant to the Act. Section 102g of the Act makes the casino absolutely liable for the conduct of any junket representative or enterprise.

DISCUSSION

Sands first argues that it should avoid liability for the conduct complained of under the de minimis doctrine. The doctrine says that criminal conduct can be excused, by an assignment judge, when it:

> a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
>
> b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation or conviction; or
>
> c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. .... N.J.S.A. 2C:2-11.

The Casino Control Act is a licensing statute. To argue that Sands' transaction with an unlicensed person is de minimis is bold, but unavailing.

But the doctrine is clearly not available to the Sands. The doctrine applies only to criminal charges, not administrative charges. In addition, the harm sought to be prevented by the Legislature did occur in this case; an unlicensed junket was brought to the Sands casino. The act was trivial only in the sense that a more serious infraction such as an illegal credit transaction did not occur during the junket.

Second, the Sands argues that the doctrine of equitable estoppel bars the imposition of liability under the facts of this case. Equitable estoppel is a form of issue preclusion. Lubliner v. Paterson Alcoholic Beverage Control Bd., 33 N.J. 428, 435 (1960). Equitable estoppel is defined as the principle which precludes party A from litigating the issue which arises when, by his own conduct or language, party A led party B to do what he would not otherwise have done, to party B's detriment. In re Gravure Paper & Board Corp., 234 F. 2d 928, 932, (1956), citing Dickerson v. Colgrove, 1880, 100 U.S. 578, 580, 25 L. Ed. 618.

Essentially, the doctrine precludes one party from leading another party down the primrose path, then charging the other party with trespassing on the path. In this case, the Sands seeks to impress the doctrine upon the Casino Control Commission, which, while not a party, is the licensing body which, the Sands claims, caused the Sands to rely to its detriment upon the Commission's monthly notices advising casinos which persons had valid junket representative or enterprise licenses. The Sands argues that the doctrine applies because the Sands was led to believe that Matash was licensed. Matash's name appeared on the lists circulated by the Commission until May 21, 1988, long after the junket Matash brought to the Sands on May 5 and 6, 1988. In addition, argues the Sands, the Commission, by its admonitions included in the letters accompanying the lists of licensed junket representatives and enterprises, to the effect that casino licensees must consult the lists prior to engaging junket representatives and enterprises, created the situation in which the Sands now finds itself; i.e., charged with employing an unlicensed junket representative or enterprise.

Sands also points out that the Commission knew that Sands would rely upon the lists because the Sands submitted to the Commission for its approval an internal operating procedure which plainly indicated that Sands relied exclusively upon these lists in dealing with previously licensed junket representatives or enterprises.

Sands also argues that it should not be held liable for an event which the Division, in the person of Detective Sergeant Gallagher, stood by and watched unfold. Sands claims that Gallagher had an affirmative duty to either warn Sands that Matash was unlicensed or to prevent the unlicensed junket from taking place in any case. This is also an estoppel argument. Gallagher said that he is not the person to decide whether a person is unlicensed. He also testified that he did not want to

compromise any investigation of collusion, which might have appeared later. But Gallagher also testified that he had years of experience dealing with Pam Culinane of Sands, who was responsible for license renewals, and he always found her to be honest, forthright and trustworthy.

The Division correctly points out in its brief that the Sands could not have relied on the May 21, 1988 letter because the junket complained of occurred long before that date. In addition, the Division says, the list accompanying the May 21, 1988 letter is dated April 6, 1988, 12 days before the April 18, 1988, cut-off date for applications.

Finally, the Division argues that the April 18, 1988, cut-off date was a unique event which statutorily cut off the rights of temporary licensees if they failed to file a new application before that date. As such, the regular course of conduct of both the Commission and the Sands was not relevant to that special event. The Sands knew about the cut-off date; it sent reminders to its junket representatives and enterprises so that they too would be aware of the cut-off date.

In this case, the Sands was not led down any primrose path; it failed to adjust for a statutory change which affected its procedures. It is no defense that someone from the Commission also failed to make the correction and circulated an out of date list after the effective date of the statute requiring temporary licensees to file an updated application. The Commission is not bound by that act, the Commission is bound only by its duly authorized resolutions.

In addition, the Commission's actions in sending reminders to casino licensees to check Commission lists for licensed junket representatives and enterprises, did not induce the Sands to take an action which it would not otherwise have taken. The statutory change in status for temporary junket representatives and enterprises who failed to file a new application was a unique event, not a regular occurrence within the contemplation of those sending out the list and those receiving it.

Gallagher's actions, or failure to act, raises the question of police discretion in a context other than tort, search and seizure or entrapment.

Gallagher's rationale, that he wanted to see what would develop, that he wanted to see if there was any collusion, would not avail him if he failed to act while witnessing an assault or homicide. On the other hand, undercover drug agents daily observe drug transactions, without making either an arrest or giving a warning, in order to discover the leader and his stash This case is somewhere in between.

Gallagher is a detective, not a trouble shooter. A detective's forte is his patience. Like an angler, he uses what bait is available. In this case, Matash was bait. Gallagher saw, or thought he saw, an opportunity to observe a crime in progress. Matash, however, was acting alone. With hindsight, we can see that more clearly than Gallagher could in May of 1988. Nevertheless, it was a reasonable exercise of police discretion.

Finally, I mention again that section 102g of the Act makes the casino absolutely liable for the conduct of any junket representative or enterprise.

For all these reasons, I **CONCLUDE** that the doctrine of equitable estoppel is inapplicable in the present circumstances.

I **CONCLUDE** that Sands violated N.J.S.A. 5:12-102g when it received a junket represented by Thomas Matash on May 5, 1989.

PENALTY

In considering an appropriate sanction, the Commission must consider six factors described at N.J.S.A. 5:12-130 (a seventh factor is a mere caveat on the second factor).

The first factor is the risk to the public created by the licensee's conduct. The purpose of licensing statutes, when they are not mere revenue enhancers, is to provide the State with an opportunity to examine the background and experience of license applicants. Such an investigation is vital to the integrity of casino gambling. Therefore, the risk created here was significant.

A second factor is the seriousness of the conduct and whether it was purposeful and a knowing violation of the act or regulation. Setting aside the risk, which has already been described, the conduct was not otherwise serious since it was the failure of an operating procedure to adjust to a statutory deadline. There was no intention to violate any statute or regulation on the part of the Sands.

A third factor goes to justification. Administrative error is never justified but it can be excused. This violation, because an error of omission, is excusable.

A fourth factor is the consideration of prior violations. None were mentioned at the hearing.

A fifth factor goes to corrective action and whether any was taken. Here the responsibility for compliance with this section of the statute has been assumed directly by counsel.

The sixth factor requires a consideration of ability to pay and the relationship of the fine to the conduct. There was no evidence offered that Sands could not afford a monetary penalty.

The final factor is a reminder that inadvertence or the unintentional occurrence of the conduct is no defense, but goes only to the degree of penalty.

The Sands did not intend to receive a junket conducted by an unlicensed representative or enterprise. It had procedures in place to guard against such an event. Unfortunately, the procedures did not anticipate an amendment to the licensing statute. The procedures have been upgraded since the event. Finally, Sands was cooperative with the Division and readily shared its information with Detective Gallagher.

The Division has recommended a penalty in the amount of $1,000. The Sands does not believe a fine is warranted. The Sands argues, although there is no such fact in evidence, that Matash "only" received a letter of censure. A letter of reprimand or censure should be viewed as a more serious sanction than a modest monetary penalty.

Such a letter survives the fiscal year and annual report. It can affect a reputation for good character, honesty and integrity. This case does not require a letter of reprimand or censure; nor does it require a civil penalty in any amount.

It is not necessary that a penalty follow every decision adverse to a casino. The adverse decision can be cited in support of future penalties if the occasion warrants. N.J.S.A. 5:12-130d. That threat is a serious enough penalty under the facts of this case.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 23, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/28/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 29 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

James Gallagher
Kathleen McCracken
Ellen Duffey

EXHIBIT LIST

For the Petitioner:

P-1 Job Description of director of casino marketing
P-2 Section II, Subsection C of the Sands' approved Internal Control Submission for Licensing and Compliance

For the Respondent:

S-1 May 1988 junket schedule
S-2 March 8, 1988 letter with junket license report
S-3 May 21, 1988 letter with junket license report
S-4 June 6, 1988 letter with junket license report
S-5 Letter, dated July 18, 1988 from Mr. Rivera-Soto to the Casino Control Commission
S-6 Letter, dated July 29, 1988, from the Casino Control Commission to Mr. Rivera-Soto
S-7 Letter, dated August 9, 1988, from Mr. Rivera-Soto to Rose Papa
S-8 Letter, dated August 26, 1988, from Rose Papa to Mr. Rivera-Soto
S-9 Letter, dated September 29, 1988, from Rose Papa to Mr. Rivera-Soto
S-10 Letter, dated October 27, 1988, from Rose Papa to Mr. Rivera-Soto
S-11 Letter, dated November 23, 1988, from Rose Papa to Mr. Rivera Soto

S-12 Letter, dated December 29, 1988, from Rose Papa to Mr. Rivera-Soto
S-13 Letter, dated January 27, 1989, from Rose Papa to Mr. Rivera-Soto
S-14 Letter, dated March 13, 1989, from Rose Papa to Mr. Rivera-Soto
S-15 Letter, dated March 29, 1989, from Rose Papa to Mr. Rivera-Soto
S-16 Division of Gaming Enforcement investigation report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 89-134 and 89-EA-141
OAL DOCKET NO. CCC 8825-88
APPLICATION NO. 42787-21
REGISTRATION NO. 37008-40
ORDER NO. 89-29-13

APPLICATION OF SHARON P. MAYS FOR RENEWAL OF HER CASINO EMPLOYEE LICENSE	
AND	
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	ORDER
Complainant,	
v.	
SHARON P. MAYS,	
Respondent.	

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed recommending that the Commission deny the application of Sharon P. Mays for renewal of her casino employee license and revoke her casino hotel employee registration, and the Commission having considered the entire record of these proceedings at its public meeting of July 19, 1989; and the Commission having identified several issues which were not resolved by the record,

IT IS on this 7th day of August 1989, ORDERED that, for the reasons stated on the record of its meeting of July 19, 1989, incorporated herein by reference, this matter is remanded to the Office of Administrative Law for consideration of the following:

(1) further information concerning the circumstances of Ms. Mays's offense, including, but not limited to, the date of her arrest for conspiracy to distribute CDS and any and all police reports pertaining to the arrest;

(2) whether or not Ms. Mays failed to disclose her arrest for conspiracy on the Personal History Disclosure Form -2A filed October 16, 1986, a copy of which is to be included in the record on remand;

(3) further discussion as to the issue of rehabilitation and, in particular, the weight ascribed to Ms. Mays's character references;

(4) further inquiry as to whether Alfred M. Smith, Ms. Mays's former supervisor at Resorts International Hotel and Casino, was aware of her conviction at the time he wrote the letter of reference entered as exhibit R-2; and

IT IS FURTHER ORDERED that the parties be permitted to adduce such additional evidence on remand as the ALJ shall permit in the sound exercise of his discretion pursuant to N.J.A.C. 1:1-15.1(c).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8825-88

AGENCY DKT. NOS. 89-134 & 89-EA-141

SHARON P. MAYS,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Sharon P. Mays, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 23, 1989 Decided: June 9, 1989

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of complaints filed by respondent with the Casino Control Commission seeking revocation of petitioner's casino hotel employee registration and objecting to the renewal of her license. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on May 23, 1989, after which the record closed.

The questions presented are whether petitioner was convicted of conspiracy to distribute controlled dangerous substances, N.J.S.A. 2C:5-2, a crime listed as a statutory disqualifier under N.J.S.A. 5:12-86c(1), and if so, whether she can demonstrate rehabilitation, N.J.S.A. 5:12-90h, 91d, and good character, N.J.S.A. 5:12-89b(2).

The facts are undisputed. Petitioner was indicted on October 28, 1986, on charges of conspiracy to distribute cocaine. Following a jury trial in February and March 1988, petitioner was found guilty. On April 15, 1988, she was sentenced to serve 90 days in the county jail and to two years' probation. Among the aggravating factors noted by the trial judge at sentencing was the likelihood that petitioner had been involved in an organized criminal activity, and among the mitigating factors he noted that she acted under strong provocation and that she had no prior criminal history. The sentence also reflected her "apparently limited involvement" in the conspiracy.

Petitioner conceded that she had associated with a group that sold cocaine, but she claimed that this was mainly because her boyfriend was one of the ringleaders. Petitioner testified that she is 30 years old, that she has two children, and that this incident was her first involvement with law enforcement in more than ten years. She testified that she attends church every Sunday and that this episode was aberrational.

Petitioner was shown an application which she filed with Resorts International Casino Hotel on May 24, 1988. The application asks whether she had ever been convicted of a crime, and on it she responded in the negative. Petitioner explained that this answer was intended to get her through the door, as she did not expect to even be interviewed if she listed a criminal offense, and that she intended to disclose her conviction at an appropriate later time.

Petitioner's brother, Stephen Mays, an ordained minister, and her father, James Mays, a long-time businessman in Pleasantville, testified in her behalf as character witnesses. Petitioner also submitted a number of character letters. This is the substance of the record.

As it is undisputed that petitioner was convicted of a disqualifying offense, it was for her to satisfy the rehabilitation criteria of the Act with respect to both her license and her registration. See, N.J.S.A. 5:12-90h, 91d. I do not believe that this has been accomplished. Though her role in the conspiracy for which she was convicted may have been limited, the crime was a serious one and of fairly recent vintage. She was a mature adult at the time. Moreover, almost immediately after her trial and sentencing, when the impact of her wrongdoing should have been most vivid in her memory, she filed a false employment application with Resorts. Thus, despite the sincere pleas of her father

and brother, I do not believe that sufficient time has passed without incident to establish rehabilitation.

Based on the foregoing, it is my conclusion that petitioner has failed to establish rehabilitation and good character, and it is **ORDERED** that her application to renew her casino hotel employee license be **DENIED** and that her casino hotel registration be **REVOKED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6/9/89
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

6/13/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 13 [redacted]
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Sharon P. Mays
Stephen Mays
James Mays

EXHIBIT LIST

P-1	Indictment
P-2	Order for Commitment
P-3	Application for Employment
R-1	Letter, to "To Whom It May Concern" from Don Tobe, dated April 26, 1989
R-2	Letter, to "To Whom It May Concern" from Alfred M. Smith, dated May 1, 1989
R-3	Letter, to "To Whom It May Concern" from Phillip L. Jackson, Jr., dated May 2, 1989
R-4	Letter, to "To Whom It May Concern" from Clifford Mays, Jr., dated April 26, 1989
R-5	Letter, to Mr. Lane Stebbins from Lynnaye Smith, dated May 18, 1989
R-6	Letter, to Honorable Judge Greenberg from Stephen C. Mays, undated
R-7	Letter, to Honorable Judge Greenberg from William H. Myers, dated March 30, 1988
[illegible]	Letter, to Honorable Judge Greenberg from Mr. & Mrs. James Mays, undated
R-9	Copy of newspaper clipping, dated January 20, 1986
R-11	Letter, to Judge Greenberg from Harold Mosee, dated March 30, 1988
R-12	Letter, to Sir from Joseph DiFalso, undated
R-13	Letter, to "To whom it may concern" from Julius Corbett, undated
R-14	Letter, to "To Whom It May Concern" from Minister Rose Mays, dated April 4, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-303; 89-145
APPLICATION NO. 74824-21
REGISTRATION NO. 78767-40
OAL DOCKET NO. CCC 423-89
(CCC 6087-88 ON REMAND)
ORDER NO. 89-45-19

APPLICATION OF JOSEPH M. MONTRESOR
FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

ORDER

Complainant,

v.

JOSEPH M. MONTRESOR,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 15, 1989,

IT IS on this 6th day of December 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY BB
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 423-89
(ON REMAND CCC 6087-88)
AGENCY DKT. NOS. 89-145
AND 88-EA-303

JOSEPH M. MONTRESOR,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

William Gillson, Esq., for petitioner

James J. Armstrong, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 23, 1989 Decided: October 10, 1989

BEFORE **JOSEPH F. FIDLER, ALJ:**

STATEMENT OF THE CASE

This matter concerns in part the application of Joseph M. Montresor (petitioner) for casino employee licensure. By letter report to the Casino Control Commission dated May 23, 1988, the Division of Gaming Enforcement objected to the petitioner's licensure, based upon his alleged commission of the offense of theft by unlawful taking in the third degree, contrary to *N.J.S.A.* 2C:20-3. This matter also concerns the Division's complaint filed with the Commission on December 6, 1988, which seeks revocation of the petitioner's casino hotel employee registration, also based upon the allegation that the petitioner has committed the offense of theft by unlawful taking, which is an automatic disqualifier from licensure pursuant to section 86c(1) of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*).

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The parties have stipulated that the petitioner committed the offense of theft by unlawful taking in the third degree, contrary to *N.J.S.A.* 2C:20-3, and that he has successfully completed a Pre-Trial Intervention Program. Accordingly, these are the issues to be resolved:

1. Has the petitioner, having committed an otherwise disqualifying offense pursuant to sections 86c(1) and 86g of the Casino Control Act, affirmatively established his rehabilitation by clear and convincing evidence, pursuant to sections 90h and 91d of the act.

2. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

The matter of the petitioner's application for casino employee licensure was previously before the Office of Administrative Law. The petitioner failed to appear at scheduled proceedings and an initial decision was filed with the Casino Control Commission indicating the petitioner's failure to appear. Subsequently, the petitioner requested a hearing on the Division's complaint and also appeared before the Commission to offer an explanation for his non-appearance at the OAL hearing. On January 17, 1989, the Commission ordered that the initial decision of the Office of Administrative Law be rejected and that the application matter and the Division's complaint for revocation be consolidated; both matters were then to be transmitted to the Office of Administrative Law for a hearing.

On January 20, 1989, these matters were transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 ***et seq.*** A prehearing conference was held on April 25, 1989, and the hearing was thereafter held as scheduled in Vineland, New Jersey, on June 6, 1989. I subsequently determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on June 23, 1989. Issuance of this initial decision was delayed because of illness.

FINDINGS OF FACT

The material facts are essentially undisputed. The petitioner is 21 years old and he resides with his mother and 18 year-old brother in Vineland, New Jersey. The petitioner holds casino hotel employee registration no. 78767-40.

The petitioner's mother, Beverly Montresor, testified that he normally contributes to household expenses. He started working in restaurants while still going to high school. However, the petitioner is now unemployed and the family is unable to make ends meet each month. The petitioner testified that he has worked in casinos for a total of about ten months. He at first testified that he was either laid off from his casino jobs or left them for better employment. However, this testimony was modified somewhat when he described the actual circumstances of his various departures from casino jobs.

The petitioner stated that he worked for Resorts International Casino Hotel in the fall of 1987. He was terminated in November of that year after having been sent home from work one busy night when his supervisor was not happy with the way the petitioner was setting up tables. When the petitioner returned to work he learned that he had been terminated. He feels the reason for termination was his lack of experience, but the casino records indicate that the termination was because of a no-call, no-show situation.

The petitioner also worked at the Trump Plaza Casino Hotel. However, he quit after one week because he did not like the job and it did not pay enough. The petitioner has worked at Caesars Boardwalk Casino Hotel on more than one occasion. He was hired there in the spring of 1988, but was then laid off in the fall of that year. According to the petitioner, he started back at Caesars in March of 1989 as a food runner. However, the petitioner's supervisor was not happy with his work. One day, the supervisor became very angry with the petitioner and pushed him. According to the petitioner, he reported this to the next higher supervisor. The petitioner then gave two weeks notice, but was told by his direct supervisor that he should leave right a way or he would be terminated. Thus, the petitioner left that job.

Testifying on his own behalf, the petitioner stated that he had a poor relationship with his father beginning in December 1986. His father told him that he

did not want to provide support for or be bothered with the petitioner and his brother. As a result, the petitioner felt hurt and angry.

According to the petitioner, in January 1987 he felt that he needed to get even with his father. Through a friend, the petitioner met some men who agreed to burglarize the home of the petitioner's father. On January 7, 1987, the petitioner's home was broken into and cash and various items of property valued in excess of $1,300 were taken. The petitioner admitted that he paid Antonio Rodriguez $200 to commit the burglary. When the police investigated the incident, they learned from the elder Montresor that he had been having problems with his two sons (see City of Vineland Police Department Investigation and Arrest Report admitted into evidence as Exhibit R-2).

The police investigation into the matter continued when Rodriguez was arrested following a domestic dispute. The police learned that Rodriguez had been involved in burglaries and Rodriguez implicated the petitioner. On February 23, 1987, the police questioned the petitioner and he admitted his involvement. He told the police that his father had caused him so many problems that he was looking for a way to get back at him. The petitioner testified at the hearing that he confessed to the police when they said things would be easier for him if he cooperated. He characterized the burglary as an act of revenge against his father.

The petitioner testified candidly that he still feels hurt and angry toward his father. However, he now deals with that feeling by simply ignoring his father. He stated that what he did in January 1987 was wrong and stupid and he has learned a lesson. Having gotten himself in trouble, he now has trouble finding a decent job and this has also hurt his family.

When the petitioner was arrested, he was charged with conspiracy, contrary to *N.J.S.A.* 2C:5-2, burglary, contrary to *N.J.S.A.* 2C:18-2, and theft by unlawful taking in the third degree, contrary to *N.J.S.A.* 2C:20-3. The petitioner was indicted on these charges in March 1987 (Exhibit R-1). However, he was admitted into the Pre-Trial Intervention Program. According to the petitioner, he was required to perform 40 hours of community service and report to a probation officer once a month. The community service consisted of picking up bottles and other trash around Vineland. The petitioner completed his work satisfactorily and always reported to his probation officer as scheduled. By letter dated May 26, 1989 (Exhibit P-1) Senior Probation Officer Melvin Durham stated that the petitioner "presented as a

motivated and conscientious participant" during the course of his supervision. He further described the petitioner as an excellent candidate to benefit from the Pre-Trial Intervention Program for first offenders. It is undisputed that the petitioner satisfactorily completed the Pre-Trial Intervention Program. By order dated April 4, 1988, the indictment against the petitioner was dismissed (Exhibit R-1).

The petitioner has no record of other arrests and no record of convictions. It was clear from the testimony of Beverly Montresor that her former husband's attitude toward the petitioner had a serious negative impact. She described the petitioner as a quiet young man who had kept his feelings to himself. He has become mature and responsible since January 1987, according to Beverly Montresor. She stated that the petitioner has learned a lot from the criminal incident and has stayed out of trouble. He now has learned to handle pressure very well and is able to stay calm in the face of bad experiences.

A letter from Rev. Monsignor Joseph G. Stoerlein, of the Sacred Heart Rectory, was admitted into evidence as Exhibit P-2. He wrote in support of the petitioner's efforts to obtain a casino employee license and retain his registration. According to Reverend Monsignor Stoerlein, he is aware of the petitioner's involvement in the break-in of his father's home during the pendency of his parent's divorce and he believes that the petitioner has paid the price for his action. He knows that the petitioner now recognizes that there is no excuse for his conduct and he is making a sincere effort to be a good citizen and a contributing member of society.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2) and 90b of the act, an applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to sections 86c(1) and 86g of the act, the Commission shall deny a casino employee license to any applicant who has committed an offense specifically identified as a

disqualifier from licensure, even if such conduct has not been or may not be prosecuted under the laws of this state.

Participation in casino operations as a licensee or registrant under the Casino Control Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. *N.J.S.A.* 5:12-1b(8). It is the intention of the act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the act.

It is undisputed that the petitioner committed the offense of theft by unlawful taking in the third degree, contrary to *N.J.S.A.* 2C:20-3. This offense occurred on January 7, 1987, when the petitioner arranged for his father's home to be burglarized. The burglary took place and cash and items valued in excess of $1,300 were taken. This is an offense specifically listed under section 86c(1) of the act as a disqualifier. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his commission of a disqualifying offense, pursuant to sections 86c(1) and 86g of the act.

Section 91d of the act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his commission of an offense identified in the act as a disqualifier, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the respondent shall not be denied a casino employee license on the basis of his otherwise disqualifying conduct, provided that he has affirmatively demonstrated his rehabilitation pursuant to section 90h of the act. In determining whether rehabilitation has been affirmly demonstrated, the following factors under *N.J.S.A.* 5:12-90h (the language of section 91d is almost identical) shall be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

The petitioner's employment as a registrant has involved restaurant work. He seeks licensure as a casino employee which would permit his employment in a licensed casino as a teller. At the time of his criminal conduct in January 1987, the petitioner was 18 years old. He is now 21 years old.

The petitioner's conduct involved serious criminal matters, including conspiracy and theft by unlawful taking. Certainly, his criminal conduct has a negative impact on his qualifications for casino hotel employee registration and casino employee licensure. However, it is important to remember that the petitioner's criminal conduct arose from the matrimonial dispute between his parents and his resulting hurt and anger which he expressed toward his father. It does not appear that the criminal activity was engaged in for any economic advantage. Rather, it was an act of revenge against his father.

The petitioner has had no criminal involvement before or after his arrest and indictment. He satisfactorily completed the Pre-Trial Intervention Program and the indictment against him was dismissed. Completion of the program included the requirement that he fulfill 40 hours of community service. The petitioner has become more mature since his arrest in January 1987. Given the reasons for his one incident of criminal involvement and his progress since that date, it appears to be unlikely that the petitioner will have any further criminal involvement.

Based upon the foregoing evidence and the applicable law, I **CONCLUDE** that the petitioner has established his rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91b of the Casino Control Act. Based upon

all of the foregoing, I also **CONCLUDE** that the petitioner has established by clear and convincing evidence that he presently possesses the good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Joseph M. Montresor for licensure as a casino employee permitting him to work in a licensed casino as a teller be **GRANTED**. It is further **ORDERED** that the complaint of the Division of Gaming Enforcement seeking revocation of the petitioner's casino hotel employee registration is **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

October 10, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

10-10-89
Date

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 13 1989
Date

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Pre-trial intervention letter dated May 26, 1989

P-2 Letter dated March 25, 1989

For the respondent:

R-1 Certified indictment and order of dismissal

R-2 Arrest and investigation reports

WITNESSES

For the petitioner:

Beverly Montresor
Joseph M. Montresor

For the respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-142
LICENSE NO. 46745-22
OAL DOCKET NO. CCC 8824-88
ORDER NO. 89-37-26

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF LEANNA P. MOORE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 13, 1989,

IT IS on this 20th day of September 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8824-88
AGENCY DKT. NO. 89-EA-142

LEANNA P. MOORE,
Petitioner
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Leanna P. Moore, petitioner, pro se
Charles F. Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 10, 1989 Decided: July 31, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that petitioner Leanna P. Moore is statutorily disqualified from holding a casino employee license under N.J.S.A. 5:12-86c(1) by virtue of her having received Unemployment Insurance benefits (UIB) to which she was not entitled and which constitutes theft by deception in excess of $500, in violation of N.J.S.A. 2C:20-4, despite the fact that petitioner's acts were not prosecuted in the criminal courts of this State as permitted by section 86g of the Casino Control Act (Act).

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PROCEDURAL ASPECTS

The Division filed a letter with the Casino Control Commission (Commission), dated September 13, 1988, objecting to the renewal of petitioner's non-gaming casino employee license. On November 15, 1988, petitioner requested a hearing and the matter was transmitted on December 5, 1988, to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing was held on March 13, 1989 before Administrative Law Judge Stephen W. Thompson. A hearing was held on July 10, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record was closed on July 10, 1989.

ISSUES

The issues agreed upon by the parties and which are to be determined by this tribunal are set forth in the prehearing order as follows:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

UNCONTESTED FACTS

Based upon the testimony and other evidence adduced at the hearing, the following facts are neither contested nor in dispute and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

Petitioner is presently 49 years of age who was originally issued a casino employee license on January 11, 1984 when petitioner was approximately 44 years of age. Petitioner admits that between the dates of February 21 through April 18, 1982, she was in receipt of UIB while employed by the Playboy Hotel and Casino in Atlantic City, New Jersey. During that period, petitioner received $133 per week for nine weeks. She was in receipt of the total amount of $1,197 in UIB to which she was not entitled. On January 5, 1984, the Division of Unemployment and Disability Insurance (DUDI) sent petitioner a Notice of Hearing to be held on January 17, 1984. Petitioner failed to appear at the scheduled hearing. Subsequently, on February 10, 1986, the Director of DUDI issued petitioner its notice of determination that petitioner was not entitled to the UIB she collected and a demand for repayment. The Director's notice included a fine of $299.25 (25 percent of the $1,197 due and owing) for a total amount of $1,496.25, to be repaid by petitioner. On or about April 24, 1986, the DUDI filed a Certificate of Debt with the Superior Court of New Jersey which issued a judgment against petitioner in the amount of $1,308.25.

Petitioner admits that she received the UIB while employed. She collected the UIB because she wanted the money and that an unidentified friend told her she could take it. Petitioner asserted that she was 41 years of age when she collected the UIB for which she was neither eligible nor entitled to received. In or about May 2, 1989, subsequent to the Division's letter to the Commission objecting to the renewal of petitioner's casino employee license, the debt to DUDI was satisfied; some of which was by way of attachment of petitioner's New Jersey State Income Tax refund.

Petitioner is presently employed by the Trump Regency Hotel as a public area worker - cleaning under her casino employee license no. 46745-22. Petitioner received $8.05 per hour as the rate of pay. She has no prior criminal record of arrests or convictions.

DISCUSSION AND CONCLUSIONS

DISQUALIFICATION FOR LICENSURE

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the

revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that petitioner's misconduct constitutes a disqualifying offense under section 86c of the Act. It asserts that petitioner's receipt of UIB to which she was not entitled in the amount of $1,197 is, under the New Jersey Code of Criminal Justice, the crime of theft by deception. N.J.S.A. 2C:20-4. Notwithstanding that petitioner had not been prosecuted for the offenses, the Division cites section 86g of the Act which provides that licensure may be denied to a person who has committed an offense enumerated in section 86c(1), whether or not the offense had been prosecuted under the criminal laws of this State.

Section 89c(1) of the Act sets forth the offenses under the New Jersey Code of Criminal Justice which, if committed, constitutes per se disqualification for casino employee licensure. Section 86c(1) lists, as a class of disqualifying offenses, those involving theft and related offenses which constitute crimes of the second or third degree under N.J.S.A. 20C:20-1 et seq. Theft by deception, N.J.S.A. 2C:20-4, is included in that class. N.J.S.A. 2C:20-2b provides for the grading of theft offenses and states that:

> (2) Theft constitutes a crime of the third degree if:
>
> (a) The amount involved exceeds $500.00 but is less than $75,000; ....

The record demonstrates that petitioner was in receipt of UIB in excess of $500. I **CONCLUDE**, therefore, that the Division has clearly established, by a preponderance of the credible evidence, that petitioner committed an offense which disqualifies her from licensure in the casino industry. See: *State v. Moore*, 158 N.J. Super. 68 (App. Div. 1978).

REHABILITATION

An applicant and/or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-

90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of persons who have or have had the applicant (licensure) under their supervision.

In consideration of petitioner's claim of rehabilitation, the following has been found in this record:

1. Petitioner is presently the holder of casino employee license no. 46745-22 as a public area cleaner. She is presently employed by the Trump Regency Hotel which does not possess a casino license or operation certificate. Consequently, petitioner will have no direct contact with gaming activities nor patrons who are directly engaged in gambling.

2. While petitioner was not criminally prosecuted for receiving UIB, to which she was not entitled, the offense is a serious one. The evidence clearly demonstrates

that petitioner was in receipt of an amount of money in excess of $500 under fraudulent representation which, pursuant to the New Jersey Criminal Code, constitutes an indictable offense of the third degree. The excuse petitioner advanced for her conduct was that she "wanted the money," and that an unidentified friend told her she could take it.

3. & 4. The herein record demonstrates that between the dates of January 3, 1982 through and including February 14, 1982, petitioner was unemployed and legitimately in receipt of UIB. In or about the week ending February 21, 1982, petitioner commenced employment and failed to advise the DUDI of her reemployment. Thus, petitioner continued to collect UIB while gainfully employed thereafter for a period of nine weeks.

5. Petitioner was 41 years of age when the offense was committed. Therefore, lack of maturity cannot excuse petitioner for her actions.

6. Although the offense was continuous from February 21, 1982 through April 18, 1982, it was an isolated incident. There were no prior nor subsequent offenses committed by petitioner of this or another nature.

7. There were no social conditions or circumstances which contributed to the offense.

8. Petitioner produced evidence that the total amount, which presumably included the fine, was repaid and satisfied. The record demonstrates that the restitution of the UIB was made by petitioner at least on on or before May 2, 1989, subsequent to the Division's objection to the Commission on September 13, 1988 to the renewal of petitioner's casino employee license.

Petitioner presented a letter from the Executive Housekeeper of the Atlantis Hotel Housekeeping Department who asserted, among other things, that petitioner has an excellent attendance work record and proven to be a responsible and reliable worker. Petitioner has demonstrated a cooperative attitude who is very good with hotel patrons and volunteers for overtime work when needed.

In consideration of the above factors, I **FIND** and **CONCLUDE** that petitioner has affirmatively established her rehabilitation. She has made full restitution of the debt incurred by her deceptive conduct; albeit some seven years after the event. Petitioner has no record of criminal activity; either prior to or subsequent to her aberrant conduct in 1982, whereby she collected the UIB to which she was not entitled. She has continued in her employment as a housekeeper at the Atlantis Hotel and has the support and respect of her supervisor.

GOOD CHARACTER, HONESTY AND INTEGRITY

Pursuant to N.J.S.A. 5:12-89b(2), petitioner is required, among other things, to establish her reputation for good character, honesty and integrity by the standard of proof of clear and convincing evidence. Petitioner produced no witnesses to testify on her behalf. She did, moreover, produce letters from two co-workers and a supervisor at the Atlantis; all of whom expressed an opinion concerning petitioner's good reputation. Petitioner is known to be kind, a friend in need and admired by her fellow workers. She is known to be of outstanding good character and integrity within her work community.

I am persuaded and so **CONCLUDE**, that the key factors of petitioner's actual character and attributes of good character, honesty and integrity have been met, *In the Matter of the Application of Resorts International Hotel for a Casino License*, Casino Control Commission (February 26, 1979) by the standard of clear and convincing evidence. *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324 (App. Div. 1981).

ORDER

Accordingly, it is hereby **ORDERED** that the Division's objection to petitioner's renewal for a casino employee license be **DENIED** and that petitioner's casino employee license application be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this

recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

31 July 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8/3/89
DATE

Kim Woody
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 3 1989
DATE

Jacqueline Venable/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Leanna P. Moore

For the Respondent:

Leanna P. Moore

EXHIBIT LIST

For the Petitioner:

P-1 To Whom it May Concern, April 19, 1989, by Wanda L. Keith
P-2 To Whom it May Concern, May 3, 1989, by Marsha Glover
P-3 Letter, May 2, 1989, to Atlantis Hotel Casino from Mario F. Floriani, Sheriff, Atlantic County
P-4 Three Money Orders made out to Atlantic County Sheriff
P-5 Letter, April 25, 1989, to the Casino Control Commission from Patricia Walters

For the Respondent:

R-1 Department of Labor and Industry, Claimant Ledger
R-2 Wage Information Inquiry
R-3 Demand Letter, 2-10-86
R-4 Schedule of Overpayments
R-5 Certificate of Debt
R-6 Notice of Hearing
R-7 Record of Hearing
R-8 Case referral for litigation or judgment enforcement
R-9 Letter, 3-18-88 to Dear Sir from Leanna P. Moore
R-10 Employee License Renewal Application 6-1-87

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-43
LICENSE NO. 64113-21
OAL DOCKET NO. CCC 936-89
ORDER NO. 89-38-18

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

JOSEPH NATALE,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 20, 1989,

IT IS on this 21st day of September 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the Commission's order of August 18, 1988, suspending the respondent's casino employee license is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 936-89
AGENCY DKT. NO. 89-43

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
JOSEPH NATALE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Andrew F. Lippi, Esq., for respondent (Andrew F. Lippi and Associates)

Record Closed: June 30, 1989 Decided: August 8, 1989

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 1, 1988, seeking the revocation of the casino employee license of the respondent, Joseph Natale, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

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Based on the application of Deputy Attorney General R. Lane Stebbins, on behalf of the Division, the casino employee license of the respondent was suspended after the filing of the Division's complaint. Mr. Natale requested a hearing and the matter was transmitted to the Office of Administrative Law on February 7, 1989, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held by way of a telephone conference call on April 10, 1989, and at that time the parties agreed that the issues in this matter are:

1. Whether respondent's continued license is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c, because he is alleged to have committed a violation of N.J.S.A. 2C:35-10, despite the fact that there was no conviction in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

2. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

The hearing took place on June 30, 1989, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

Mr. Natale has attended gaming school programs for both blackjack and roulette, and he has held a casino employee license with endorsements for both blackjack and roulette. As of April 1988, Mr. Natale was employed as a blackjack dealer by Tropicana Casino and Hotel (Tropicana).[1] Mr. Natale had a good work record at Tropicana and his employment there was terminated when his license was suspended in August 1988, because of an incident which occurred in the casino.

---

1 During his testimony, Mr. Natale stated that he was employed by Tropicana (1T9). I am accepting his testimony even though the Division's complaint indicates he was employed by Showboat Casino and Hotel.

On April 28, 1988, Mr. Natale was working the day shift at the Tropicana. On that date, during a work break, Mr. Natale spoke to another Tropicana dealer in the employees' lounge, and he purchased about 12 Valium pills for between $10 to $20. Although he gave the money to the other dealer in the lounge, Mr. Natale received the pills in the employees' bathroom.

After the break, he returned to work. Mr. Natale was then tapped on the shoulder and requested to go with a security guard to the Division's office. While there, the respondent admitted that he had purchased the Valium pills and when searched, the Division's representative found the pills in his possession.

According to Mr. Natale, he had purchased the pills because he was experiencing pain in his neck. Mr. Natale stated that approximately two months before the incident he had been involved in an automobile accident and had injured his neck and back. After the accident, he did not work for several days and his doctor gave him a prescription for Motrin, a muscle relaxant. Mr. Natale was discharged by the doctor prior to April 28, 1989, and his supply of Motrin was exhausted. Mr. Natale thought that if he went to the doctor, he would have gotten another prescription for Motrin but it was easier to buy some Valium, which also acts as a muscle relaxant.

As a result of the incident, the respondent was arrested and a complaint was filed against him in the Atlantic City Municipal Court. Mr. Natale was charged with the possession of a controlled dangerous substance; namely, ten Valium tablets, in violation of N.J.S.A. 2C:35-10(a)1 (P-1). Thereafter, Mr. Natale was admitted into the Pre-Trial Intervention (PTI) Program. He has now successfully completed the program and the charge against him has been dismissed.

According to Mr. Natale, he never used illegal drugs before or after the incident and he only purchased the Valium because of the pain in his neck. At the time of the purchase, Mr. Natale thought that it might be wrong to purchase the Valium from a coworker; however, he did not think it would be a serious offense.

Mr. Natale is 37 years old and he was very upset about the consequences of the April 28, 1988 incident, especially on his future employment. The respondent's wife, Sylvia Natale testified and confirmed that the respondent never used drugs and that he was very upset about the April 28, 1988 incident. After discussing the matter, the

respondent and his wife decided that he should seek counseling to prove that he did not have a drug problem.

Mr. Natale voluntarily went to see a counselor, J. St. John, employed by the Cape Counseling Services, Drug and Alcohol Unit. By letters dated September 6, 1988, and June 8, 1989, Mr. St. John stated that Mr. Natale has regularly attended a counseling program since August 1988 (R-1, R-2). As part of the program, Mr. Natale has had monthly urine screening tests for drug usage (R-3, R-4). In his letters, Mr. St. John stated that he has not seen any indication of an abuse problem or an addiction or any behavior problems. It is Mr. St. John's opinion that the April 28, 1988 purchase was an isolated incident resulting from a lack of good judgment or carelessness (R-2). Further, Mr. St. John stated that the respondent's motivation for attending the program is his desire to prove to the Commission and to his employers that an abuse problem or an addiction definitely does not exist (R-2). In addition to the counseling program, Mr. Natale has been doing volunteer community service work with the United Way of Atlantic County (R-5). According to Mr. Natale, he worked regularly for the United Way for a four month period and still works there periodically.

CONCLUSIONS OF LAW

In this matter, Deputy Attorney General Stebbins argued that the facts clearly show that the respondent purchased a controlled dangerous substance, Valium, while working at Tropicana, which is a violation of N.J.S.A. 2C:35-10(a)1. Although this criminal action is not an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), Mr. Stebbins argued that this action is inimical to the policies of the Casino Control Act, and therefore is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Based on the respondent's admissions during the hearing, I **CONCLUDE** that the Division has shown conduct which would constitute a violation of N.J.S... 10(a)1, which is not an automatic disqualifier pursuant to N.J.S.A. 5:12-86c(1). In order to decide whether this conduct is inimical pursuant to N.J.S.A. 5:12-86(c)2, it is necessary to consider the circumstances underlying the incident as well as the respondent's subsequent conduct, i. e., his rehabilitation. Donna Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1986); In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979).

Therefore, it is appropriate to look at the standards set forth in the Casino Control Act governing rehabilitation for purposes of licensure:

> (1) The nature and duties of the position applied for;
>
> (2) The nature and seriousness of the offense or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the applicant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense or conduct;
>
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90b]

As to rehabilitation, the respondent was a mature person at the time he purchased the Valium in the casino; however, this appears to be Mr. Natale's only criminal offense. Further, it should be noted that Valium is not a typical "street drug" and it is reasonable to assume that Mr. Natale may not have known that Valium, a prescription drug, is legally classfied as a controlled dangerous substance, the same as marijuana, etc. As to this one incident, Mr. Natale has completed the PTI program and in addition, he has voluntarily sought counseling and has performed community service.

I agree with Mr. St. John's assessment of the incident as being a single foolish act which in part was due to the physical pain he was experiencing at the time. As a result of this incident, Mr. Natale was arrested and required to participate in the PTI program, he lost his casino job and his casino employee license was temporarily suspended. All of this has had a substantial effect on Mr. Natale and I am confident that there will be no repetition of the incident.

In view of all the facts, I **CONCLUDE** that Mr. Natale has shown by clear and convincing evidence that he is rehabilitated pursuant to N.J.S.A. 5:12-90b, and I **CONCLUDE** that Mr. Natale's action does not constitute an inimical offense pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Deputy Attorney General Stebbins also argued that because of his criminal conduct on April 28, 1988, Mr. Natale cannot show by clear and convincing evidence that he has the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90b. Based on the facts in this matter, I **CONCLUDE** that the respondent has shown by clear and convincing evidence that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2).

Therefore, I **ORDER** that the casino employee license of Joseph Natale not be revoked.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 8, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

8/9/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 10 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Complaint filed against Joseph Natale in the Atlantic City Municipal Court, dated April 28, 1988

For the Respondent:

R-1 Letter from J. St. John, CTI to Andrew F. Lippi, dated September 6, 1988

R-2 Letter from J. St. John, CTI to Andrew F. Lippi, dated June 8, 1989

R-3 Report regarding the urine test results for Joseph Natale, dated September 2, 1988

R-4 Report regarding the urine test results for Joseph Natale, dated June 9, 1989

R-5 Letter from Mary A. Fortier, dated June 20, 1989

WITNESSES:

For the Petitioner:

Joseph Natale

For the Respondent:

Joseph Natale
Sylvia Natale

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8216-88
AGENCY DOCKET NO. 89-EA-74
ORDER NO. 89-22-17

SCOTT ONQUE, Petitioner, v. STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 31, 1989,

IT IS on this 15th day of June, 1989,

ORDERED that the initial decision is rejected to the extent that it finds petitioner Scott Onque failed to meet the standards of financial stability, integrity and responsibility necessary for issuance of a key employee license under N.J.S.A. 5:12-89(b) and

IT IS FURTHER ORDERED that the application for a key employee license is granted and

IT IS FURTHER ORDERED that the application for renewal of a casino employee license is granted.

NEW JERSEY CASINO CONTROL COMMISSION
Walter N. Read, Chair

By: Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8216-88

AGENCY DKT. NO. 89-EA-74

SCOTT ONQUE,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Scott Onque, the petitioner, pro se

Norma Stancil, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: March 14, 1989 Decided: April 10, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Scott Onque, applied to the Casino Control Commission (Commission) for the issuance of a casino key employee license (cage shift supervisor) and the renewal of a casino employee license (cage cashier), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance and renewal of the licenses by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to sections 89b(2) and 90b, which incorporates section 89b(2) by reference, and that the petitioner lacked the requisite

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financial stability, integrity and responsibility for either casino key employee or casino employee licensure, pursuant to sections 89b(1) and 90b, which incorporates section 89b(1) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino key employee license, so that he could be employed as an assistant cage shift supervisor at TropWorld Hotel and Casino. By letter to the Commission, dated August 25, 1988, the Division objected to the petitioner's application for licensure as a cage shift supervisor. The petitioner filed with the Commission an application for the renewal of a casino employee license, so that he could be employed as a cage cashier at TropWorld Hotel and Casino. By letter to the Commission, dated October 4, 1988, the Division objected to the petitioner's application for licensure as a cage cashier. In both letters, the Division objected to the petitioner's licensure, asserting that the petitioner had numerous debts, that he had issued numerous bad checks, that he had defaulted on student loans, that he had been convicted of shoplifting, and that he had received disciplinary action from his employer for having shortages. Based upon these actions, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino key employee licensure, pursuant to section 89b(2), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. The Division further asserts, based upon these actions, that the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. Based upon the first report, the Commission notified the petitioner on October 6, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated October 11, 1988, and received by the Commission on October 12, 1988, the petitioner requested a hearing. By letter dated November 2, 1988, the Commission acknowledged receipt of the petitioner's request for hearing and consolidated both cases for purposes of the hearing, since the objection to renewal of his casino employee license was the same as the objection to his application for a casino key employee license. On November 2, 1988, the Commission transmitted the matter to the Office of Administrative Law, where it was received on November 9, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before Administrative Law Judge Edgar R. Holmes on December 29, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

B. Whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(1) as incorporated within section 90b.

A hearing was held on March 14, 1989, at the Main Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

THE FACTS

The Division is challenging, in part, the petitioner's financial stability, integrity and responsibility. The basis of this objection is the petitioner's poor personal financial record. The petitioner obtained two student loans from Howard Savings Bank: one in March 1984 for $1,000, and one in December 1985 for $2,500. These loans were guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On September 22, 1987, the petitioner went into default on his loan. As NJHEAA had guaranteed the loans, it paid Howard Savings Bank $3,760.63, a total that included principal and interest. As of December 14, 1988, the petitioner owed NJHEAA a balance of $3900.13. The petitioner began making payments on this debt at a rate of $60 per month on August 23, 1988 (R-7). He has since voluntarily increased his monthly payment to $100 per month, and he is now making regular payments.

In October 1981, the petitioner had obtained another school loan in the amount of $1,650 from Stockton State College. The petitioner's payments were scheduled to begin on March 8, 1987, in the amount of $90 every three months. The petitioner defaulted on this loan and the account was turned over to a collection agency. Prior to September 1988, the petitioner made verbal arrangements with the collection agency to make payments on this debt. On September 1, 1988, the petitioner began making payments of $100 per month on this debt. He has now settled his account with the

collection agency and is making regular payments directly to Stockton State College (P-13 and P-14).

The petitioner also has several credit card accounts which have been "charged-off." A charged-off account is one that has been dishonored by the purchaser and written off as uncollectible by the store. Over a period of two years, the petitioner opened three accounts with Macy's (Bamberger's). One was a large purchase homemaker's account, one was a flexible account, and one was a New York account. One account was charged-off in June 1985 in the amount of $182.63, one was charged-off in August 1986 in the amount of $1009, and one was charged-off in October 1986 in the amount of $459.56. In October 1987, a judgment was entered in Essex County against the petitioner in the amount of $1,036.11 (plus court costs of $294.75), for the August 1986 charge-off by Macy's. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $40.68 per week. This garnishment has been fully satisfied by the petitioner. The petitioner has also attempted to pay off the other two accounts by submitting payments on those accounts. He submitted a monthly repayment agreement to Macy's on February 23, 1989 (P-10).

An account opened by the petitioner at Stern's Department store was charged-off in March 1984 in the amount of $95. A judgment was obtained against the petitioner regarding this account in Essex County in October 1984. This judgment has been satisfied.

The petitioner's account at Pally's Jewelers (Citizen's Jewelers) was charged-off in the amount of $281.17 in April 1986. This account was turned over to a collection agency and remains unsatisfied (R-9).

The petitioner's account at Sears, Roebuck and Company was charged-off in May 1987, in the amount of $483.94. On May 22, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Sears account in the amount of $518.87. With interest and costs added, the total judgment was for $631.81. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $100.50 per week (R-10). This garnishment has been fully satisfied by the petitioner.

In 1982, the petitioner opened a revolving charge account at J.C. Penney. This account was charged-off in April 1984 in the amount of $300. The petitioner paid off this account in the amount of $353 on December 3, 1988 (R-12).

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In May 1986, the petitioner opened an account with the Popular Club Plan. This account was charged-off in February 1988 in the amount of $100. At the time of the Division's investigation this account was still unsatisfied (R-12); however, it has since been satisfied (P-8).

In 1986, the respondent and two roommates rented an apartment. The telephone bill was listed in all three names; however, the electric company would only list its bill in one name. The petitioner opened the electric account in his name, and his roommates were supposed to split the electric bill with him. During the winter of 1987/1988, the petitioner and his roommates entered into the electric company's budget program. This resulted in the petitioner and his roommates paying a fixed amount for electricity throughout the winter, with any additional charges for usage being prorated throughout the year. In the spring of 1988, the petitioner and his roommates decided to vacate the apartment. The petitioner was billed $956.06 from the Atlantic Electric Company. The petitioner's roommates departed and refused to split the electric bill. On September 6, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Atlantic Electric Company bill in the amount of $965.06. With interest and costs, the total judgment came to $1133.26 (R-12 and R-13). A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino. This garnishment began in February 1989, and the respondent is currently paying this debt.

The petitioner's rent is currently $570 per month. On November 23, 1987, January 12, 1988, and February 10, 1988, the respondent issued checks to the Garden Courts Apartments to pay for his monthly rent. These checks were returned due to insufficient funds in the petitioner's checking account. The petitioner has since been prompt in making his rent payments and has not issued any other bad checks to his landlord in the last year.

Between January 1987 and March 1988, the petitioner issued 28 checks that were returned due to insufficient funds in his checking account. During this same time period, the petitioner was charged 24 overdraft fees by his bank, First Fidelity (R-4). While banking at First Fidelity, the petitioner did not keep accurate records. He did not register all of his checks and did not balance his account. In order to correct this situation and get a clean start, the petitioner closed this account and opened a new account.

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The petitioner opened a new checking account at Midlantic Bank in July 1988. This account has been managed much more efficiently. The petitioner has not had any checks returned for insufficient funds. He has maintained a positive, although sometimes minimal, balance, he has a savings account, and he has his salary deposited by his employer directly into his account (R-5).

On December 21, 1985, the petitioner was arrested for shoplifting by the Egg Harbor Township Police Department. The petitioner had been shopping at Sears at the Shore Mall. He had numerous small purchases in his hands. When he approached the cash register, he fumbled to get his credit card out of his wallet, which was in his back pocket. While holding his other purchases, he placed three small bottles of perfume—with a total value of $36—in his front pocket so that he could retrieve his credit card. He then forgot to take the perfume back out of his pocket when the cashier was ringing up his purchases. He was stopped and detained by store personnel before he left the store (R-16 and R-17).

On January 13, 1986, in the Municipal Court of Egg Harbor Township, the petitioner pleaded guilty to the charge of shoplifting, in violation of N.J.S.A. 2C:20-11. The petitioner was sentenced to spend 15 days in jail, which sentence was suspended, and to pay a $150 fine, $25 in court costs, and a $25 Violent Crimes Compensation Board penalty. As a condition of the suspension of the jail sentence, the petitioner was required to attend a shoplifting course. The petitioner attended the course and satisfied all parts of his sentence on or before March 15, 1986 (R-16).

The petitioner is 25 years old, single, and has no children. He attended Stockton State College from June 1981 through December 1986. He received minimal financial support from his family while he attended school. He worked part-time from September 1981 through March 1983 as a food service helper for CVI Foods at Stockton State College. He worked from eight to sixteen hours per week at an hourly rate of $3.35 per hour. He averaged ten hours per week and earned from $30 to $35 per week. He was terminated from this position for not reporting to work.

Since June 14, 1984, the petitioner has been employed at the Tropicana Hotel and Casino (now TropWorld) as a cage cashier. In 1987, the petitioner obtained a casino key employee license and was promoted to assistant cage shift supervisor. He held this position for one year until his casino key employee license expired and was not renewed due to the Division's letter of objection filed in this case. The petitioner was therefore

returned to his former position of cage cashier. The petitioner presently earns $423 per week, and has a gross income of approximately $22,000 per year.

As a cage cashier, the petitioner functions either as a general cashier at the front window or as a cashier either in the main bank or chip bank. He is responsible for a $100,000 daily bank, which must be checked out accurately. A complete position description is set forth in exhibit R-1. As an assistant cage shift supervisor, he is responsible for checking and verifying all his cashiers' work. He is also responsible for counting down the drawers of all cage cashiers. Two days a week, when the cage shift supervisor was off, the petitioner was in charge and functioned as the acting cage shift supervisor. A complete position description is set forth in exhibit R-2.

The petitioner has received five disciplinary actions for shortages in his bank. On June 29, 1984, only two weeks after he was employed, the petitioner received a written warning regarding a $1,000 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6A). On August 28, 1984, the petitioner received a written warning regarding a $250 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6B). On December 26, 1984, the petitioner received a second written warning for sending out a $100,000 fill transaction instead of a $100,000 credit transaction while working in the chip bank. It was noted that the fill and credit slips are very similar and hard to distinguish (R-6C). On December 22, 1985, the petitioner received a first written warning regarding a $500 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6D). Finally, on August 29, 1986, the petitioner received a verbal warning regarding a $130 shortage in his drawer. An audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift (R-6E).

The petitioner testified that variances do occur and are easy for any cashier to make. It is not uncommon, especially for new cashiers, to incur variances. His variances were not the result of theft.

The petitioner is also a substitute teacher at the Brighton Avenue School in Atlantic City. He has been a substitute teacher for three years. He earns $50 a day, but his income varies depending on his availability and the school's needs.

When the petitioner opened his credit card accounts, he was young and opened them in good faith. As his bills increased, however, he was unable to pay them. His living expenses consumed his salary. He attempted to pay the bills after the accounts were charged-off. He applied for a debt consolidation loan; however, he was turned down for the loan. The companies, however, wanted the full balances in a lump-sum payment and would not allow the petitioner to make payments on the debts over time. The petitioner could not make full payment at one time, so he thought that the garnishment procedure was the best way to pay his bills. Prior to September 1988, he made verbal arrangements to pay his other bills, and he began paying them in September 1988. He has paid or is now paying on all of his debts. His financial situation is on an upward trend, and he now values his credit rating.

The petitioner believes he has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. He is now more responsible. He is not incurring any new debts until all his debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again.

The petitioner was raised in Newark in a family with four children. His parents were divorced when he was only 13 years old. He graduated from high school, and moved to the Atlantic City area to attend Stockton State College. He now needs 32 credits to graduate with a degree in Bio Med Communications. Some credits have been deleted from his record until he fully pays his student loans. The petitioner regularly attends church and participates in the choir. He likes to work with children, and he helps coach basketball at the Brighton School. Being a substitute teacher enables him to work with children, and this gives him a sense of community fulfillment. He also participates in the local chapter of the N.A.A.C.P.

Two witnesses testified on behalf of the petitioner. John E. Copriviza, casino cage manager and assistant casino controller of TropWorld, is the person who originally hired the petitioner. Mr. Copriviza was aware of the petitioner's shoplifting conviction and the garnishment actions, and he is the individual who signed the employee disciplinary actions. Mr. Copriviza supported the petitioner's testimony that shortages, particularly for new employees, are not unusual, but remarked that they are obviously not preferred. In 1987, the total variance at the Tropicana was $140,000, and for January and February of this year, the total variance was approximately $3,000 per month. There was never a

question of honesty or integrity involved in the petitioner's variances. Mr. Onque even volunteered to take a lie detector test concerning his variances.

Mr. Copriviza is happy with the petitioner's performance. Mr. Onque is respected by his supervisors, has a good working relationship with the cashiers, has an excellent knowledge of cage procedures, and has a good relationship with customers. Mr. Copriviza promoted the petitioner from cage cashier to assistant cage supervisor in October 1987 over five other cage cashiers. In October 1988, the petitioner was nominated to be the Tropicana supervisor of the quarter. Mr. Copriviza had to demote the petitioner at the end of October 1988 because of the Division's objection to the issuance of a key employee license to the petitioner. The petitioner has been a good employee, and Mr. Copriviza recommends that he be granted a key employee license. Mr. Copriviza would like to retain the petitioner; in fact, the petitioner is one of two individuals the Tropicana would like to promote to the position of cage manager. Mr. Copriviza believes the petitioner has matured, accepted responsibility, and turned his life around.

Sharon Brown first met the petitioner at Stockton State College in 1981. She has known of his credit problems yet she has never questioned his integrity. She has seen the petitioner at Community Baptist Church every Sunday, has seen him participate in the local chapter of the N.A.A.C.P., and has seen him involved in the community. He is one of the most honorable and trusted people she knows in the community.

The petitioner presented three letters of recommendation. The first is a letter of commendation dated August 29, 1988, and written by John M. Gallaway, president and general manger of the Tropicana. Attached to Mr. Gallaway's letter is a letter of appreciation written by a casino patron commending Mr. Onque for his prompt, professional, and courteous service (P-1).

The second letter, dated February 9, 1989, is written by Van C. Bryant, casino cage shift supervisor at TropWorld. Mr. Bryant wrote:

> Scott Onque' has worked with me since June 13, 1984. He has worked as my Assistant Shift Supervisor on Swing Shift since October 10, 1987. During this time I have found him to be a supervisor of great professionalism and integrity.

> Scott is respected and praised by his co-workers as well as his subordinates for his outstanding job as an Assistant Supervisor. He is very knowledgeable of the position and the jurisdiction that surrounds it in respects to the Casino Control Act.
>
> If this letter is to have any bearing on your decision to license Scott, I highly recommend him to be licensed by the Commission as a Key Employee to continue the fine job he is doing with TropWorld. [P-2]

The third letter, dated February 9, 1989, is written by Bruce Greenfield, principal of the Brighton Avenue School. Mr. Greenfield wrote:

> I am writing this letter as a recommendation for Scott Onque who has served as a substitute teacher at the Brighton Avenue School for the past three years.
>
> Scott is a very reliable young man who has done an excellent job working with students on all grade levels. He is conscientious, cooperative, trustworthy and will do whatever is needed to fulfill his role for the job or task he had undertaken.
>
> I, as Principal of the Brighton Avenue School, would hire Scott without hesitation as a full-time teacher, if he so desired.
>
> I know he will be an asset in whatever position he desires and for whomever he is employed. [P-6]

The petitioner also submitted two management performance evaluations prepared by the Tropicana. The first, a 90-day review performed in January 1988, rates the petitioner's overall performance as "superior" (P-4). The evaluation describes the petitioner as "an excellent example for his subordinates in customer relations." It says that he shows initiative, produces superior quality work, has sound judgment, and has excellent job potential. The second is an annual review performed in October 1988. Again, the petitioner's overall performance was rated as "superior" (P-3). He took the time to learn policies and procedures, showed great improvement in his ability to communicate with supervisors, had total commitment to customer satisfaction, made sound and effective decisions, and exhibited initiative and creativity. The ratings reflect a quality employee who is growing in maturity and experience.

The petitioner also submitted a certificate issued by the State Department of Education after the completion of a criminal record check done pursuant to N.J.S.A. 18A:6-7.1 certifying the petitioner as being approved for public school employment in this State (P-5).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino key employee and casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and credit problems and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct and credit problems were, in part, due to immaturity. I am also inclined to believe that his financial problems were the result of his inexperience in dealing with his financial affairs. As indicated above, the petitioner has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. Credit was freely given to him, yet he could not make the payments. His bills outstripped his income. He is now more responsible. He is not incurring any new debts until all his debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again. His growing maturity and dramatically-improved sense of responsibility has been demonstrated in the last two years by his outstanding success in the casino industry as a cage cashier and in his supervisory position as an assistant cage shift supervisor. He has either fully satisfied or is in the process of satisfying virtually all of his old debts.

FINDINGS OF FACT

1. The petitioner obtained two student loans from Howard Savings Bank: one in March 1984 for $1,000, and one in December 1985 for $2,500. These loans were guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On September 22, 1987, the petitioner went into default on his loan. As of December 14, 1988, the petitioner

owed NJHEAA a balance of $3900.13. The petitioner began making payments on this debt at a rate of $60 per month on August 23, 1988. He has since voluntarily increased his monthly payment to $100 per month, and he is now making regular payments.

2. In October 1981, the petitioner had obtained another school loan in the amount of $1,650 from Stockton State College. The petitioner's payments were scheduled to begin on March 8, 1987, in the amount of $90 every three months. The petitioner defaulted on this loan. On September 1, 1988, the petitioner began making payments of $100 per month on this debt. He has now settled his account with the collection agency and is making regular payments directly to Stockton State College.

3. Over a period of two years, the petitioner opened three accounts with Macy's (Bamberger's). One account was charged-off in June 1985 in the amount of $182.63, one was charged-off in August 1986 in the amount of $1009, and one was charged-off in October 1986 in the amount of $459.56. In October 1987, a judgment was entered in Essex County against the petitioner in the amount of $1,036.11 (plus court costs of $294.75), for the August 1986 charge-off by Macy's. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $40.68 per week. This garnishment has been fully satisfied by the petitioner. The petitioner has also attempted to pay off the other two accounts by submitting payments on those accounts. He submitted a monthly repayment agreement to Macy's on February 23, 1989.

4. An account opened by the petitioner at Stern's Department store was charged-off in March 1984 in the amount of $95. A judgment was obtained against the petitioner regarding this

account in Essex County in October 1984. This judgment has been satisfied.

5. The petitioner's account at Pally's Jewelers (Citizen's Jewelers) was charged-off in the amount of $281.17 in April 1986. This account was turned over to a collection agency and remains unsatisfied.

6. The petitioner's account at Sears, Roebuck and Company was charged-off in May 1987, in the amount of $483.94. On May 22, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Sears account in the amount of $518.87. With interest and costs added, the total judgment was for $631.81. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino for the amount of the judgment, to be paid in installments of $100.50 per week. This garnishment has been fully satisfied by the petitioner.

7. In 1982, the petitioner opened a revolving charge account at J.C. Penney. This account was charged-off in April 1984 in the amount of $300. The petitioner paid off this account in the amount of $353 on December 3, 1988.

8. In May 1986, the petitioner opened an account with the Popular Club Plan. This account was charged-off in February 1988 in the amount of $100. At the time of the Division's investigation this account was still unsatisfied; however, it has since been satisfied.

9. In 1986, the respondent and two roommates rented an apartment. The telephone bill was listed in all three names; however, the electric company would only list its bill in one name. The petitioner opened the electric account in his name, and his roommates were supposed to split the electric bill with him. During the winter of 1987/1988, the petitioner

and his roommates entered into the electric company's budget program. In the spring of 1988, the petitioner and his roommates decided to vacate the apartment. The petitioner was billed $956.06 from the Atlantic Electric Company. The petitioner's roommates departed and refused to split the electric bill. On September 6, 1988, a judgment was entered in the Superior Court in Atlantic County against the petitioner regarding the Atlantic Electric Company bill in the amount of $965.06. With interest and costs, the total judgment came to $1133.26. A wage attachment was issued against the petitioner's salary at the Tropicana Hotel and Casino. This garnishment began in February 1989, and the respondent is currently paying this debt.

10. On November 23, 1987, January 12, 1988, and February 10, 1988, the respondent issued checks to the Garden Courts Apartments to pay for his monthly rent. These checks were returned due to insufficient funds in the petitioner's checking account. The petitioner has since been prompt in making his rent payments and has not issued any other bad checks to his landlord in the last year.

11. Between January 1987 and March 1988, the petitioner issued 28 checks that were returned due to insufficient funds in his checking account. During this same time period, the petitioner was charged 24 overdraft fees by his bank, First Fidelity.

12. While banking at First Fidelity, the petitioner did not keep accurate records. He did not register all of his checks and did not balance his account. In order to correct this situation and get a clean start, the petitioner closed this account and opened a new account.

13. The petitioner opened a new checking account at Midlantic Bank in July 1988. This account has been managed much

more efficiently. The petitioner has not had any checks returned for insufficient funds. He has maintained a positive, although sometimes minimal, balance, he has a savings account, and he has his salary deposited by his employer directly into his account.

14. On December 21, 1985, the petitioner was arrested for shoplifting by the Egg Harbor Township Police Department. The petitioner had been shopping at Sears at the Shore Mall. He had numerous small purchases in his hands. When he approached the cash register, he fumbled to get his credit card out of his wallet, which was in his back pocket. While holding his other purchases, he placed three small bottles of perfume—with a total value of $36—in his front pocket so that he could retrieve his credit card. He then forgot to take the perfume back out of his pocket when the cashier was ringing up his purchases. He was stopped and detained by store personnel before he left the store.

15. On January 13, 1986, in the Municipal Court of Egg Harbor Township, the petitioner pleaded guilty to the charge of shoplifting, in violation of N.J.S.A. 2C:20-11. The petitioner was sentenced to spend 15 days in jail, which sentence was suspended, and to pay a $150 fine, $25 in court costs, and a $25 Violent Crimes Compensation Board penalty. As a condition of the suspension of the jail sentence, the petitioner was required to attend a shoplifting course. The petitioner attended the course and satisfied all parts of his sentence on or before March 15, 1986.

16. The petitioner is 25 years old, single, and has no children.

17. He attended Stockton State College from June 1981 through December 1986. He received minimal financial support from his family while he attended school. He worked part-time from September 1981 through March 1983 as a food service

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or not reporting to work.

18. Since June 14, 1984, the petitioner has been employed at the Tropicana Hotel and Casino (now TropWorld) as a cage cashier. In 1987, the petitioner obtained a casino key employee license and was promoted to assistant cage shift supervisor. He held this position for one year until his casino key employee license expired and was not renewed due to the Division's letter of objection filed in this case. The petitioner was therefore returned to his former position of cage cashier. The petitioner presently earns $423 per week, and has a gross income of approximately $22,000 per year.

19. The petitioner has received five disciplinary actions for shortages in his bank. On June 29, 1984, only two weeks after he was employed, the petitioner received a written warning regarding a $1,000 shortage in his drawer. On August 28, 1984, the petitioner received a written warning regarding a $250 shortage in his drawer. On December 26, 1984, the petitioner received a second written warning for sending out a $100,000 fill transaction instead of a $100,000 credit transaction while working in the chip bank. It was noted that the fill and credit slips are very similar and hard to distinguish. On December 22, 1985, the petitioner received a first written warning regarding a $500 shortage in his drawer. Finally, on August 29, 1986, the petitioner received a verbal warning regarding a $130 shortage in his drawer. In all shortage cases, an audit failed to recover the shortage, but all banks, as well as the cage summary, balanced at the conclusion of the shift.

20. Variances do occur and are easy for any cashier to make. It is not uncommon, especially for new cashiers, to incur variances. His variances were not the result of theft. There was never a question of honesty or integrity involved in the petitioner's variances. Mr. Onque even volunteered to take a lie detector test concerning his variances.

21. The petitioner is a substitute teacher at the Brighton Avenue School in Atlantic City. He has been a substitute teacher for three years. He earns $50 a day, but his income varies depending on his availability and the school's needs.

22. The petitioner was raised in Newark in a family with four children. His parents were divorced when he was only 13 years old. He graduated from high school, and moved to the Atlantic City area to attend Stockton State College.

23. The petitioner regularly attends church and participates in the choir. He likes to work with children, and he helps coach basketball at the Brighton School. Being a substitute teacher enables him to work with children, and this gives him a sense of community fulfillment. He also participates in the local chapter of the N.A.A.C.P.

24. Mr. Onque is respected by his supervisors, has a good working relationship with the cashiers, has an excellent knowledge of cage procedures, and has a good relationship with customers. He was promoted the petitioner from cage cashier to assistant cage supervisor in October 1987 over five other cage cashiers. In October 1988, the petitioner was nominated to be the Tropicana supervisor of the quarter. The petitioner is one of two individuals the Tropicana would like to promote to the position of cage manager.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> (1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency

with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

DISCUSSION

The Division contends that the petitioner lacks the requisite financial stability, integrity and responsibility for casino key employee licensure, pursuant to section 89b(1), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. The Division further contends that the petitioner lacks the requisite good character, honesty and integrity for casino key employee licensure, pursuant to section 89b(2), and for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference.

(A) N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b

Under section 89b(1) for casino key employee licensure, and under section 90b, which incorporates section 89b(1) by reference, for casino employee licensure, Mr. Onque was required to establish, by clear and convincing evidence, his financial stability, integrity and responsibility. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that this standard encompasses all financial aspects of the Applicant, the holding company and the other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual. Id at 250.

In Velasquez v. Division of Gaming Enforcement, OAL DKT. CCC 4251-87 (July 7, 1988), aff'd. Casino Control Comm. (September 23, 1988), Judge Law held that the petitioner's recent attempts to establish a payback schedule, although commendable, were "too recent to demonstrate his 'financial stability, integrity and responsibility.' " In In the Matter of the Application of Gilbert L. Smith as a Casino Employee, OAL DKT. CCC 2252-79 (November 8, 1979), mod., Casino Control Comm. (March 20, 1980), the Commission rejected the ALJ's finding of a lack of financial stability and stated:

> 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 Applicant's 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, satisfied 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). [Final Commission Decision at 13-14]

The petitioner's prior financial record in this case is dismal. The record herein demonstrates that petitioner has engaged in a course of conduct in his business dealings that runs counter to the accepted standards of honesty and forthrightness. His history of having been arrested, not paying his debts, having his wages garnished and subsequently having made restitution on the issuance of bad checks fails to engender confidence in his basic financial solvency or his honesty and forthrightness in business dealings. Although the existence of unsatisfied debts has a negative impact upon the petitioner's financial integrity and responsibility, there are other factors here which serve to mitigate the effect. The petitioner has matured as an individual. Previously, he did not pay close attention to his credit. He was young and just starting out in school. He is now more responsible. He is not incurring any new debts until all his old debts are satisfied. He now values his credit and is remorseful about his prior credit practices. He vows that he is a more mature individual and that he will not fall into a similar credit pattern again.

His growing maturity and dramatically-improved sense of responsibility has been demonstrated in the last two years by his outstanding success in the casino industry as a cage cashier and in his supervisory position as an assistant cage shift supervisor. He has demonstrated care and prudence in his ability to manage, preserve and enhance the assets entrusted to him. He is responsible each day for large sums of money. The petitioner's undisputed efforts to cure his economic problems are further probative of his financial integrity and responsibility. He did not intend to dishonor his debts. He applied for a debt consolidation loan; however, his application was rejected. He attempted to arrange repayment schedules; however, the creditors wanted a lump-sum payment. When the petitioner could not make a lump-sum payment, garnishment orders were entered. He entered negotiations to repay other debts last September, as he was then more financially solvent. He has now either fully satisfied or is in the process of satisfying virtually all of his old debts. These attempts to reestablish his financial stability and integrity are indicative of the petitioner's effort to regain financial stability, an effort which, in turn, reflects positively upon the petitioner's financial integrity and responsibility.

Based upon the above, I **CONCLUDE** that the petitioner's efforts, however commendable, are too recent to demonstrate that his financial stability, integrity and

responsibility are sufficient for casino key employee licensure. I **CONCLUDE**, therefore, that pet tioner has failed to meet his burden of proof, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino key employee license under section 89b(1).

I further **CONCLUDE**, however, that based upon these same efforts, the petitioner has established his present financial stability, and that he has established, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino employee license under section 90b.

(B) N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Onque was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Application of Resorts International, 10 N.J.A.R. at 248. In Resorts, the Commission held that an unfavorable reputation, although it raises questions that must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-98 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct and his credit problems. In addition, the petitioner has fully accepted responsibility for his misconduct and credit problems. He has regained control over his behavior, is repaying or has repaid his debts, has performed admirably within the casino industry during the past several years, and has become a respected

member of his community. Accordingly, the petitioner presents no risk to the public or to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Onque is a person of good character, honesty and integrity, and that he is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under sections 89b(2) and 90b.

DISPOSITION

It is **ORDERED** that the application of Scott Onque for the issuance of a casino key employee license be **DENIED.**

It is further **ORDERED** that the application of Scott Onque for the renewal of a casino employee license be **GRANTED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 10, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of John M. Gallaway, president and general manager, Tropicana Hotel and Casino, dated August 29, 1988

P-2 Letter of Van C. Bryant, shift supervisor, TropWorld Casino and Entertainment Resort, dated February 9, 1989

P-3 Tropicana Hotel and Casino Management Achievement Evaluation, dated October 10, 1988

P-4 Tropicana Hotel and Casino Management Achievement Evaluation, dated January 10, 1988

P-5 Department of Education approval for public school employment, dated November 19, 1988

P-6 Letter of Bruce Greenfield, principal, Brighton Avenue School, dated February 9, 1989

P-7 Not in evidence (see R-7)

P-8 Petitioner's letter to the Popular Club satisfying his debt, dated February 28, 1989

P-9 Petitioner's letter to Stern Brothers satisfying his debt, dated February 28, 1989

P-10 Petitioner's letter to Eichenbaum, Kantrowitz, Leff & Gulko establishing a payment schedule to satisfy his Macy's debt, dated February 23, 1989

P-11 Petitioner's monthly budget

P-12 Update of petitioner's Midlantic Bank statement and his First Fidelity Bank statement

P-13 Receipt for March payment to Stockton State College on his student loan

P-14 Letter of Mimi Milazzo, NDSL Officer, Stockton State College, dated March 13, 1989

For the Respondent:

R-1 Cage Cashier position description

R-2 Assistant Cage Shift Supervisor position description

R-3 Cage Shift Supervisor position description

R-4 First Fidelity Bank statements, Jan. 20, 1987, through March 17, 1988

R-5 Midlantic Bank statements, July 26, 1988, through Jan. 26, 1989

R-6A through E Tropicana Disciplinary Action Notices

R-7 New Jersey Higher Education Assistance Association loan statement through December 1988

R-8 Superior Court of New Jersey, Atlantic County, order for wage execution, dated October 16, 1987, re: Macy's debt

R-9 Statement of Citizen's Jewelers, dated January 27, 1989, re: Pally's Jewelers account

R-10 Superior Court of New Jersey, Atlantic County, order for wage execution, dated July 1, 1988, re: Sears, Roebuck debt

R-11 Student loan journal, dated January 28, 1989

R-12 Credit Bureau Associates updated credit profile, dated January 5, 1989

R-13 Superior Court of New Jersey, Atlantic County, order for wage execution, dated August 25, 1988, re: Atlantic Electric debt

R-14 Egg Harbor Township Police Department arrest report, dated December 21, 1985

R-15 Statement of guaranteed student loan, dated March 1, 1988

R-16 Summons and Complaint, Egg Harbor Township Municipal Court, issued December 21, 1985

R-17 Personal History Disclosure Form-1

R-18 1984 Form 1040A US Individual Income Tax Return

R-19 Internal Revenue Service Form 4506, Request for Copy of Tax Form

R-20 1987 Form 1040EZ Income Tax Return

R-21 Transcript, Stockton State College

WITNESSES

For the Petitioner:

John E. Copriviza, casino cage manager and assistant casino controller, TropWorld
Sharon Brown
Scott Onque, the petitioner

For the Respondent:

Agent Charles Littlefield, Division of Gaming Enforcement
Agent Robert Ferreir, Division of Gaming Enforcement
Scott Onque, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8216-88
AGENCY DOCKET NO. 89-EA-74

IN RE THE APPLICATIONS OF SCOTT ONQUE FOR A CASINO KEY EMPLOYEE LICENSE AND RENEWAL OF HIS CASINO EMPLOYEE LICENSE	COMMISSION DECISION

Scott Onque appeared pro se
Norma Stancil, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

Scott Onque filed applications with the Casino Control Commission (Commission) for issuance of a casino key employee license and for renewal of his casino employee license. By order dated June 1, 1989, both applications were granted by the Commission, which rejected the initial decision of the Administrative Law Judge (ALJ). The case having presented a significant issue of statutory interpretation, the Commission now issues this opinion setting forth its rationale.

The Division of Gaming Enforcement (Division) objected to both of Mr. Onque's applications. The basis of its objection was that Mr. Onque failed to meet the statutory criteria of financial stability, integrity and responsibility set out in section 89b of the Casino Control Act (Act) for issuance of a key

employee license.[1] The same criteria are adopted and made applicable to casino employee licenses by section 90b of the Act. The Division thus also objected to Mr. Onque's application for renewal of his casino employee license, again asserting that he lacked the necessary financial stability, integrity and responsibility. Both applications were forwarded to the Office of Administrative Law (OAL) for a consolidated hearing.[2]

The ALJ concluded that Mr. Onque had not yet established his financial stability, integrity and responsibility sufficiently to warrant issuance of a key employee license. Yet, on the same facts, he concluded that the standard of financial stability, integrity and responsibility had been met as to the application for extension of the casino employee license. While there was also an issue of good character, honesty and integrity, that standard was found to have been met as to both licenses and there has been no challenge to that finding.

The Division excepted to the ALJ's findings, asserting that the standard of financial stability, integrity and responsibility had to be applied consistently for both key

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1. Citations to sections or subsections of the Act will be by reference to the section number only. The formal citation may be obtained by prefixing "N.J.S.A. 5:12- " to the section number.

2. The caption on the initial decision is styled as Scott Onque v. Division of Gaming Enforcement. This is incorrect and has been changed herein.

employee and casino employee license applications. It is thi[s] question which we now address.

Subsection 89b reads, in relevant part:

> (1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

Subsection 90b states that an applicant for a casino employee license must "meet the qualification criteria .. contained in section 89 of this Act." Subsection 90b adds only that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of the Act and the regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum. This experiential language does not appear in 89b. Significantly, the list of criteria set forth in section 89b are not otherwise relisted in section 90 which governs casino employee licensure.

The most obvious difference between the requirements for a casino employee license under section 90 and those for a key employee license under section 89 is the notion o[f]

rehabilitation. Under section 90, an applicant who would otherwise be disqualified for licensure by virtue of commission of a disqualifying offense under section 86 may still be licensed if he or she can affirmatively demonstrate rehabilitation based upon specified factors. A key employee license applicant is not entitled to show rehabilitation under section 89, which mandates denial of a key employee license in all cases where the applicant is disqualified under section 86.

Statutory construction starts with the directive in N.J.S.A. 1:1-1 that, unless there is an express indication to the contrary, the words shall be given their generally accepted meaning. If there is no ambiguity, the statutory language must be read literally. State v. Butler, 89 N.J. 220 (1982). Clear and unambiguous statutes are not open to interpretation. Cold Indian Springs Corp. v. Ocean Twp., 154 N.J. Super. 75 (Law Div. 1977), aff'd 161 N.J. Super. 586 (App. Div. 1978) and 81 N.J. 502 (1980).

The New Jersey courts have recognized the axiom "expressio unius est exclusio alterius" (express mention of one thing implies exclusion of all others). This maxim is not a rule, but merely an aid in determining legislative intent. Allstate Insurance Company v. Malec, 104 N.J. 1,8 (1986). Thus, absent reasons to conclude otherwise, if one thing is specifically mentioned, other things not mentioned that would fit within the same category are excluded. Squires v. Atlantic County Freeholder Board, 200 N.J. Super. 496, 503 (Law Div. 1985). In this case, the business experience standard and the

availability of rehabilitation are the only differences betwee the standards of section 89 for casino key employees and of section 90 for casino employees. Thus, while the Legislature anticipated the need for training for casino employees and, more importantly, mitigated the severity of the section 86 disqualification standards for casino employees, it did not lower or vary the affirmative criteria for licensure, including financial suitability.

This conclusion is buttressed by reference to our prior decisions regarding the financial fitness of individual licensees. The Commission considered the license application of an individual who had incurred debts similar to those sustained by Mr. Onque herein (see pp. 6-7, infra) in In the Matter of the Application of Gilbert L. Smith for Licensure as a Casin Employee, OAL Docket No. CCC 2252-79 (March 20, 1980). Discussing the concept of financial stability, we cited to our decision in In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979), as setting the standard upon which financial stability should be adjudicated. We also cited Resorts for this purpose in the 1986 license renewal proceedings for Elsinore Shore Associates. In re Elsinore License Renewal, 11 N.J.A.R. 382, 385 (1986). If the same notion of financial stability is to be applied to casinos and casino employees, surely there is no justification for establishing a dividing line between casino key employees and casino employees. Therefore, we conclude that the financial criteria under subsection 89b are incorporated by

reference in subsection 90b and that they are to be applied consistently to both groups of licensees. This conclusion is in accord with the policies of the Act favoring strict regulation of all persons participating in casino gaming, N.J.S.A. 5:12-1(b)(6), and by our projections of the harm which casino employees can bring to public confidence in casino operations. Ibid.

Based upon the above analysis, and with financial suitability, specifically financial stability, being the only issue as to Mr. Onque, it follows that we must either grant both the key employee license and the renewal of his casino employee license or deny both. The Division has urged us to do the latter, but our review of the fact findings made by the ALJ convinces us that issuance of both licenses is the correct result. What our decisions on financial stability reveal is that prime emphasis will be placed upon current and prospective financial stability. For example, in In the Matter of the Application of John J. Taylor for Licensure as a Casino Key Employee, OAL Docket No. CCC4044-79 (May 8, 1980), the Commission upheld the ALJ's determination that neither the applicant's previous financial problems nor the fact that he had filed for bankruptcy on two separate occasions prevented him from establishing his present financial stability in light of the fact that he was presently meeting his financial obligations.

In Application of Leonard Grabel for a Casino Employee License, OAL Docket No. CCC 4210-82 (August 2, 1984), the

applicant defaulted on at least ten accounts which had bee written off by the creditors. He was unable to earn sufficient money to pay his bills, especially at the time of his divorce and while he was courting his second wife, because, by his own admission, he lived beyond his means. That admission notwithstanding, the Commission rejected the initial decision and granted the license sought by Mr. Grabel based largely on the fact that, as of the time of the hearing, his financial situation had stabilized. Past failings were outweighed by the status at the time of consideration of the license application.

Here, the ALJ made a specific finding that "petitioner has established his present financial stability." Initial decision at page 22. The record before us supports that conclusion. Notwithstanding the fact that Mr. Onque has had a number of credit accounts charged off as uncollectible and that he fell behind on student loans, these failures are being, or have already been, rectified. Most of the credit accounts have now been satisfied and those remaining are being paid off in regular installments, as are the student loans. Petitioner's past financial indiscretions may be attributed in large part to immaturity and failure to take his obligations seriously while a student and in the early years of employment. He is currently well regarded by his supervisors at TropWorld which would now like to promote him to a Cage Manager position, requiring a key employee license.

Given all of the above circumstances, it is our conclusion that Mr. Onque has clearly and convincingly demonstrated his present and prospective financial stability. Thus, both applications should be granted.

CONCLUSION

For the above reasons, we reject the initial decision insofar as it concludes that the criteria of financial stability, integrity and responsibility are different under subsections 89b and 90b, and we further reject the initial decision insofar as it concludes that Mr. Onque has failed to establish his financial suitability pursuant to those subsections. The application for a key employee license is granted as is the application for renewal of Mr. Onque's casino employee license.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

E. Kenneth Burdge, Commissioner

W. David Waters, Commissioner

Frank J. Dodd, Commissioner

Dated: August 14, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-50
REGISTRATION NO. 66704-40
OAL DOCKET NO. CCC 6372-88
ORDER NO. 89-27-13

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

EVELYN BLONDELL PATTERSON,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 5, 1989,

IT IS on this 10th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /FF
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6372-88
AGENCY DKT. NO. 89-50

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
EVELYN BLONDELL PATTERSON,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Nicholas J. Schuldt III, Esq., on behalf of respondent

Record Closed: April 18, 1989 Decided: May 24, 1989

BEFORE **SOLOMON A. METZGER,** ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino hotel employee registration pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was conducted on April 18, 1989, after which the record closed.

The question presented is whether respondent can establish rehabilitation and/or waiver pursuant to N.J.S.A. 5:12-91.

The facts are either stipulated or undisputed. Respondent was indicted on March 3, 1987, in Atlantic County on a charge of theft by deception over $500 contrary to N.J.S.A. 2C:20-4. On March 23, 1987, she entered a guilty plea to this offense. Her crime involved the improper collection of unemployment benefits between December 1983 and February 1985. On April 16, 1987, she was sentenced to five years' probation and ordered to make restitution in the amount of $5468.

Respondent has been working in the laundry at Trump's Castle for approximately three years. She cleans and irons, and does not handle money. She was hired after the period when she illegally collected unemployment benefits.

Respondent testified that before working at Trump's Castle she had been employed at a motel as an inspector and that this work was full-time in the summer and part-time in the winter. She was supporting two children at the time and could not make ends meet. It was during this period that she illegally collected unemployment, and she acknowledged that she reported falsely regularly in order to continue receiving benefits. She now reports regularly to her probation officer and makes monthly payments of $75 in restitution.

Respondent also submitted a series of character letters including a letter from her probation officer indicating that she has complied with the conditions of her probation and a letter from her supervisor at Trump's Castle indicating that she is a conscientious employee.

This is the substance of the record.

To establish rehabilitation, respondent must show that the criteria set forth at N.J.S.A. 5:12-91d balance in her favor. I believe that this has been accomplished. She works in the laundry and away from money. Although the illegal conduct extended over the course of some 13 months, it was one offense. She has no prior or subsequent criminal history, she is making restitution, and she has shown an ability to maintain gainful employment over an extended period. The crime itself was not one which caused or threatened serious harm to another. We need not reach the question of whether she would otherwise qualify for waiver. See, N.J.S.A. 5:12-91e; DGE v. Hannah, 221 N.J. Super. 98 (App. Div. 1987).

Based on the foregoing, it is my **CONCLUSION** that respondent has established rehabilitation and that she is entitled to retain her casino hotel registration. It is so **ORDERED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/24/89
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

5/25/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 26 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ij

WITNESSES

Evelyn Blondell Patterson, respondent
William E. Miller, on behalf of respondent

EXHIBITS

For Petitioner:

P-1 Indictment, dated March 3, 1987

P-2 Judgment of Conviction, dated April 16, 1987

For Respondent:

R-1 Seven letters (character references)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-110
LICENSE NO. 10085-21
OAL DOCKET NO. CCC 856-89
(2669-88 ON REMAND)
ORDER NO. 89-30-16

APPLICATION OF JEANNIE D. PRICE,
a/k/a JEANNIE D. GRUBER
FOR RENEWAL OF HER CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 26, 1989,

IT IS on this 31st day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly/RM

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2669-88

AGENCY DKT. NO. 88-EA-110

JEANNIE D. PRICE,
a/k/a JEANNIE D. GRUBER,
Petitioner,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Joseph DiCroce, Esq., for the petitioner (Bathgate, Wegener, Wueters & Newman, attorneys)

R. Lane Stebbins, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 1, 1988 Decided: November 23, 1988

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Jeannie D. Price, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack and roulette

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floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a blackjack and roulette floorperson in the casino industry. By letter to the Commission, dated November 25, 1987, the Division objected to the application of the petitioner for licensure as a blackjack and roulette floorperson, asserting that the petitioner had been charged with theft of money in that the First Fidelity Bank of South Jersey had inappropriately credited $5,470.81 to the petitioner's checking account, $5,000.00 of which the petitioner withdrew, used for personal expenses, and upon discovering the error, has failed to repay. Based upon this conduct, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on January 15, 1988, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated April 4, 1988, which was received by the Commission on April 5, 1988, the petitioner requested a hearing. On April 11, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on April 15, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for June 3, 1988. On May 26, 1988, the petitioner's father contacted the Office of Administrative Law and requested an adjournment of the prehearing conference as the petitioner was then hospitalized in Las Vegas and was retaining counsel in New Jersey. This request for adjournment was granted and the prehearing conference was rescheduled.

A prehearing conference was held in the matter before Administrative Law Judge Edgar R. Holmes on July 15, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on November 1, 1988, at the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record closed.

THE FACTS

In 1985, the petitioner's then boyfriend was about to consummate a business deal. As such, she asked him for a loan of $10,000. Several days later on May 17, 1985, the petitioner went to the Somers Point Branch of the First Fidelity Bank and checked her checking account balance on a 24-hour automatic teller machine. She had anticipated that her balance would have been approximately $500 as her paycheck is directly deposited in the bank. She found her balance to be in excess of $5,000. She entered the bank and had a bank teller verify the balance in her account. Upon receiving verification of her balance, the petitioner believed that her boyfriend had taken one of her deposit slips and had deposited a portion of the loan into her account. She then attempted to withdraw $5,000 from her account. She was told that she could only withdraw such a large sum from the branch where she had originally opened the account.

The petitioner then went to the Linwood Branch of the First Fidelity Bank as she believed that was where she had opened the account. At the Linwood Branch, the petitioner spoke with Ms. Lockhardt. Ms. Lockhardt again verified the account's balance. The petitioner then asked the branch manager if there was a problem with withdrawing such a large amount. The branch manager indicated that the money could not be withdrawn at that branch as the account had been opened at the Shore Mall Branch. The petitioner then went to the Shore Mall Branch in Pleasantville. The petitioner's balance was again verified by the bank, and the petitioner was then permitted to cash a check for $5,000.

The petitioner had planned to use the $10,000 loan to purchase groceries, clothes for herself and her three children, household furnishings, school expenses, and to pay for other living expenses. Upon withdrawing the $5,000, the petitioner purchased

three sets of matresses with box springs, clothes for herself and her children and paid medical and other bills.

Several days later, the petitioner returned to the bank in order to determine exactly how much had been deposited into her checking account. She was given a list of her deposits which included a deposit for $5,470.81 which had been made on May 15. She thought that that was an odd amount, and she asked if there had been any additional funds deposited as she was expecting a $10,000 deposit. At this point in time she was angry at her boyfriend, believing that he had not deposited the full $10,000; however, he was then out of state on business and she could not contact him.

Two months later, a bank security officer requested the petitioner to come to the bank to speak with her regarding her checking account. At this meeting, the security officer informed the petitioner that the money had been deposited erroneously to her account; however, he offered no proof of that assertion. The petitioner asserted that the money was hers and in fact expected more money to be deposited to her account.

In fact, on May 15, 1988, a First Fidelity bank employee had erroneously credited $5,470.81 to the petitioner's account. The First Fidelity bank had merged with the Burlington County Trust Company. The Burlington County account numbers had ten digits and the First Fidelity account numbers had seven digits. First Fidelity had received a pre-notification of a direct deposit to the account of Roger Moore with a ten-digit number. Believing it was a "bad number," a bank employee, in an effort to determine the correct account number for Roger Moore, looked at the wrong list. She looked at the list for payroll direct deposits, saw the petitioner's direct deposit from the Tropicana and believing it was the correct account, listed the petitioner's account number for Mr. Moore's deposit (R-2).

A few days after speaking with the bank security officer, the petitioner contacted her boyfriend and he informed her that he had not deposited any money into her account. The petitioner then realized that the money had been erroneously deposited into her account. The petitioner then offered to enter into a repayment schedule with the bank; however, the bank officer refused as he wanted the petitioner to repay the entire amount immediately. The bank therefore initiated criminal charges.

On August 13, 1985, the petitioner was arrested and was charged with theft of mislaid property, in violation of N.J.S.A. 2C:20-6 (R-1). That same day, the bank notified

the petitioner it was closing her account and retaining her account balance as payment against the $5,470.81.

On November 25, 1985, just prior to trial, the attorneys representing the parties in the case agreed to settle the matter. The bank agreed to withdraw the charges and the petitioner agreed to repay the bank at a rate of $265 per month. The first payment was to be received one month later.

The petitioner failed to make a timely payment. During this period, the petitioner was not working because she was on disability. Her first payment was not made until February 1986. This check was returned for insufficient funds. The petitioner went to the bank to find out why the check was dishonored. A search of the bank records revealed that a check had cleared which was not in numerical order. It was discovered that the petitioner's daughter's boyfriend, who was living at the petitioner's house, had stolen a check from the back of petitioner's check-book and had withdrawn money from the petitioner's account without her knowledge.

In March 1986, the petitioner again issued a check to the bank pursuant to her repayment agreement, and again it was returned for insufficient funds. Again the petitioner went to the bank to determine why the check was returned for insufficient funds. It was determined that a large withdrawal had been made from the petitioner's account through a 24-hour automatic teller machine. The petitioner had made no such withdrawal and requested the bank to further investigate the matter. The bank replayed the video recording of the automatic teller and it was discovered that the petitioner's daughter's boyfriend had again surreptitiously withdrawn money from the petitioner's account.

After the first check incident, the petitioner demanded that her daughter's boyfriend move out of the house. Her daughter was pregnant and neither her daughter nor her boyfriend had insurance so the petitioner was paying their bills. The boyfriend admitted that he had taken the money but stated he had been threatened because he owed money to others. The petitioner decided not to pursue the matter for the sake of her daughter.

After the second incident, the petitioner was torn between the boyfriend, her daughter, and the impending birth of the baby. Again the petitioner decided to do

nothing. She hoped that her daugher would leave her boyfriend after the birth of the baby. Eventually, after the petitioner's daughter's boyfriend stole from her a third time, petitioner did kick him out of her house.

The petitioner was born and raised on Long Island, New York. She quit high school in 1966 after completing the eleventh grade. She subsequently earned her G.E.D. and completed two years of college at night. In 1969 she got married and became employed as a secretary at Skytower. In this job she was bonded as she handled large sums of money. In 1970 and 1971, the petitioner worked for a collection agency. She then had a baby, remained unemployed, and the couple moved to Somers Point, New Jersey. In 1973, the petitioner entered Atlantic County Community College with a major in accounting. She got a job as a bookkeeper at Mr. Tire. In either 1977 or 1978, she entered the casino industry as a roulette dealer at the then Brighton. From August 1979 until October 1980, the petitioner was a dealer at the Sands. In 1980, the petitioner was licensed as a roulette floorperson by the Commission, and in October she became employed as such at the Tropicana Hotel Casino. In 1983, the petitioner also became licensed as a blackjack floorperson by the Commission.

In 1984, the petitioner was bitten by sand fleas while she was at the Tropicana. She was improperly treated and she developed a systemic infection. She has since suffered multiple infections and contracted pneumonia, bronchitis, pleurisy and bronchial sinusitis. She developed lesions on her hands and ankles, which spread over her entire body. Evidently, her original medication masked the symptoms of her actual illness. As such she was not properly treated. The petitioner experienced numerous illnesses over the next several years. Throughout this period, the petitioner has suffered from severe depression. At the time she was to begin making repayments to the bank, she was on a leave of absence for her illness. She was terminated from her employment in May 1986 because of her long-standing illness. She was placed on disability, and she had no income until her disability checks started to arrive.

In December 1986, her disability benefits were exhausted. She contacted a friend in Las Vegas, who arranged for her transportation to Nevada. The petitioner met with John Chiero, president of the Tropicana in Las Vegas, who hired her as a floorperson. Her illness, however, persisted and she was again placed on disability. She is currently on disability and on medical leave from the Tropicana in Las Vegas until May 1, 1989.

A portion of the $5,000 in question in this case was used to pay some of the petitioner's enormous medical bills. The petitioner's medical bills currently total over $60,000. This includes a five-week period of hospitalization with costs totaling over $40,000.

The petitioner is currently residing in Ocean City, New Jersey, with two of her children, ages 18 and 16, and with her estranged husband. Her 21-year-old daughter has now moved out and lives with her boyfriend (now husband) and their baby. The petitioner intends to complete repaying the bank when she gets reestablished.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in substantial regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in substantial respects.

FINDINGS OF FACT

1. In early May 1985, the petitioner's boyfriend offered to loan her $10,000 based upon a business deal he was about to consummate.

2. On May 15, 1985, the First Fidelity Bank erroneously credited $5,470.81 to the petitioner's checking account.

3. After bank personnel verified the petitioner's bank balance nine times on May 17, 1985, and believing that her boyfriend deposited money into her account, the petitioner withdrew $5,000 from her account.

4. The petitioner initially insisted the money was hers; however, after learning of the error, she offered to repay the bank over time as she had already spent the money for household necessities and to pay bills. The bank refused, wanting repayment in full, and initiated criminal charges against the petitioner.

5. On November 25, 1985, the bank agreed to withdraw the charges, and the petitioner agreed to repay the amount over time.

6. The petitioner's first repayment check was two months late and was returned for insufficient funds as her daughter's boyfriend had stolen money from her account.

7. The petitioner's second repayment check was also returned for insufficient funds as her daughter's boyfriend had again stolen money from her account.

8. In 1984, the petitioner was bitten by sand fleas and she suffered a systemic infection. She has yet to recover from this systemic infection. She has suffered mutiple infections and contracted pneumonia, bronchitis, pleurisy and bronchial sinusitis. She has developed lesions, which have spread over her entire body, and she has suffered from severe depression.

9. Since 1984, the petitioner has been on and off disability and has had few periods of employment.

10. In December 1986, the petitioner was hired to be a floorperson by the president of the Tropicana Las Vegas.

11. The petitioner's medical bills currently total over $60,000.

12. The petitioner has had to support herself, her three children, and her oldest daughter's boyfriend.

13. Up until the time of her illness, the petitioner had been continuously employed, and she was a good employee.

14. The petitioner has not yet repaid the bank, but she intends to do so once she gets reestablished.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or

> control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

> a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
>
> b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> . . . .
>
> e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

DISCUSSION

The Division contends, by means of section 90b, which incorporates section 89b(2) by reference, that the petitioner lacks the necessary reputation for good character, honesty, and integrity required for licensure.

N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Price was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). In Resorts, the

Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure udner section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, at 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It appears that the petitioner's misconduct was a mistake and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances mitigate the seriousness of the misconduct. In addition, the petitioner has accepted responsibility for her misconduct; however, she has not been able to repay her debt. She experienced a severe medical problem in 1984 which devastated her life. She has suffered periods of extreme depression as a result of her medical condition. She fears a return to the casinos because of the embarrassment she feels she will endure as a result of the lesions which cover her body. She has not really been able to work since. At times she has been on disability. She has had brief periods of employment; however, even during these periods, her debts were such that she could not make restitution. The fact that the president of the Tropicana in Las Vegas personally hired her for a supervisory position in late 1986 speaks well of her good character, honesty and integrity. I have little doubt that the petitioner is a person of good character, honesty and integrity. She appears to be a good person and a person who might be suitable for licensure in this state; however, as indicated above, it is incumbent upon her to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to her good character, honesty and integrity. The petitioner presented no evidence at the hearing other than her own testimony. She presented no character witneses, no letters of reference, no job performance evaluations, no certificates of accomplishment or recognition; nothing which would enable me to say that she has established by clear and convincing evidence, her good character, honesty and integrity. Unfortunately, based upon the above, I cannot say

that Ms. Price is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corporation.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the petitioner's application for the renewal of a casino employee license be **DENIED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

23 November 1988
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11-28-88
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 30 1988
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter to petitioner's attorney re: repayment to the First Fidelity Bank, dated October 6, 1986

P-2 Letter of First Fidelity Bank, dated August 13, 1985

For the Respondent:

R-1 Complaint against petitioner, dated August 13, 1985

R-2 Supplemental Report of the Atlantic County Prosecutors Office, dated September 20, 1985

R-3 Statement of activity of petitioner's bank account as of June 3, 1985

WITNESSES

FOR THE PETITIONER:

Jeannie D. Price, the petitioner

FOR THE RESPONDENT:

Jeannie D. Price, the petitioner

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 856-89
AGENCY DKT. NO. 88-EA-110
(CCC 2669-88—ON REMAND)

JEANNIE D. PRICE,
a/k/a JEANNIE D. GRUBER,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Joseph A. DiCrocce, Esq., for the petitioner (Bathgate, Wegener, Wouters & Neumann, attorneys)

R. Lane Stebbins, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 13, 1989 Decided: June 14, 1989

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Jeannie D. Price, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack and roulette

floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, the Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so that she could be employed as a blackjack and roulette floorperson in the casino industry. By letter to the Commission, dated November 25, 1987, the Division objected to the petitioner's application for licensure as a blackjack and roulette floorperson, asserting that she had been charged with theft of money: the First Fidelity Bank of South Jersey had inappropriately credited $5,470.81 to the petitioner's checking account, and the petitioner withdrew $5,000 and used it for personal expenses. Upon discovering the error, she failed to repay. As a result of this conduct, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on January 15, 1988, that there was a "substantial possibility" that her application would be denied, that she had the right to a hearing, and that her failure to attend any scheduled proceeding could result in her application being denied by the Commission. By application dated April 4, 1988, and received by the Commission on April 5, 1988, the petitioner requested a hearing. On April 11, 1988, the Commission transmitted the matter to the Office of Administrative Law, where it was received on April 15, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Also on April 11, 1988, the Commission notified the petitioner that her case had been transmitted to the Office of Administrative Law and that her failure to attend any scheduled proceeding could result in the denial of her renewal application.

A prehearing conference was scheduled for June 3, 1988. On May 26, 1988, the petitioner's father contacted the Office of Administrative Law and requested an adjournment of the prehearing conference because the petitioner was then hospitalized in Las Vegas and was retaining counsel in New Jersey. This request for adjournment was granted and the prehearing conference was rescheduled.

A prehearing conference was held in the matter before Administrative Law Judge Edgar R. Holmes on July 15, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on November 1, 1988, at the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record closed. I issued an initial decision in this case on November 23, 1988, in which I concluded that the petitioner had failed to establish, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

The Commission considered the entire record of these proceedings and my initial decision at its public meeting of January 11, 1989. At that time, the Commission identified certain statements in the initial decision concerning the petitioner's good character, honesty and integrity which it believed were conflicting statements. Based upon this belief, on January 31, 1989, the Commission ordered that this matter be remanded to the Office of Administrative Law for further proceedings at which the Administrative Law Judge was to reassess the petitioner's good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

On March 8, 1989, a telephone prehearing conference was held with the parties. At that time, it was agreed between the parties that the hearing would be held on June 2, 1989, in the Atlantic County area. On May 24, 1989, I received a telephone call from the deputy attorney general requesting a telephone conference pursuant to N.J.A.C. 1:1-10.4(d) in order to make a motion to compel discovery. A telephone conference was held on May 26, 1989, regarding the motion to compel discovery. A second telephone conference was held on May 30, 1989, at which time the petitioner's attorney indicated that the petitioner wished to withdraw her application for renewal of her license. The petitioner's attorney was informed that, pursuant to N.J.A.C. 19:41-8.6(c), any request for withdrawal must be consented to by the Division and extraordinary circumstances must exist in order for the Commission to grant the withdrawal. On May 31, 1989, the deputy attorney general informed me and the petitioner's counsel that the Division would not consent to the petitioner's request to withdraw her application, and he requested that the hearing proceed as scheduled.

I. FAILURE TO APPEAR

On March 8, 1989, and again on May 25, 1989, the Office of Administrative Law notified the parties that a hearing was to be held on June 2, 1989, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey.

All parties were properly notified of the scheduled hearing by the Office of Administrative Law. On the scheduled hearing date, there was no appearance by or on behalf of the petitioner. Everyone who did appear in this matter waited one hour from the scheduled hearing time before being excused.

Ten days have passed since the scheduled hearing date. During that period, no correspondence has been received from the petitioner explaining her failure to appear at the hearing.

I FIND:

No appearance was made by the petitioner. The Office of Administrative Law has received no communication from the petitioner or from any other representative of the petitioner giving a satisfactory explanation for her failure to appear.

II. REMAND

At page 55 of the transcript of the Commission's meeting of January 11, 1989, the Chairman and Commissioner Armstrong indicated that my initial decision at page 11 was not clear as to whether or not I was wavering on the issue of whether the petitioner possesses the requisite good character, honesty and integrity or whether I misunderstood the state of the law, in that it is possible that the petitioner could prove her good character, honesty and integrity solely by her own testimony.

The questioned language reads as follows:

> I have little doubt that the petitioner is a person of good character, honesty and integrity. She appears to be a good person and a person who might be suitable for licensure in this state; however, as indicated above, it is incumbent upon her to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to her good character, honesty and

> integrity. The petitioner presented no evidence at the hearing other than her own testimony. She presented no character witnesses, no letters of reference, no job performance evaluations, no certificates of accomplishment or recognition; nothing which would enable me to say that she has established by clear and convincing evidence, her good character, honesty and integrity. Unfortunately, based upon the above, I cannot say that Ms. Price is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corporation.
>
> I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity under section 90b. [Jeannie D. Price v. Division of Gaming Enforcement, OAL DKT. CCC 2669-88, (Nov. 23, 1988)]

I recognize that in an appropriate case, it is entirely possible for a person to prove his or her own good character, honesty and integrity soley by his or her own testimony. To answer the Chairman's question on page 48 of the transcript, while I found the petitioner's testimony to be on the whole credible, I did not find it to be "totally" credible.

The determination in this case turned on the definition of the clear and convincing evidence standard. The Commission explained the differences in the evidentiary standards in In re Boardwalk Regency Casino Application, 10 N.J.A.R. 295 (1980). At pages 297 and 298 of that decision the Commission stated:

> 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. [emphasis added]

The different "burdens of proof" applicable in this State are set forth in Evid. R. 1(4) and is discussed in Lepre v. Caputo, 131 N.J. Super. 118, 123-24 (Law Div. 1974):

> Evid. R.:1(4) sets forth three standards of proofs: namely, preponderance of the evidence, clear and convincing proof and beyond a reasonable doubt. Comment 1(4)-4 provides that:
>
> > The third standard, clear and convincing evidence, falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. * * * It should produce in the mind of the trier of the fact a firm belief or conviction as to the truth of the allegations sought to be established.
>
> This principle was enunciated in Aiello v. Knoll Golf Club, 64 N.J. Super. 156 (App. Div. 1960), where the clear and convincing standard of proof was applied in establishing plaintiff's burden of proving an alleged parol gift of land. The language adopted in Aiello of an earlier Iowa case, Bevington v. Bevington, 133 Iowa 351, 358, 110 N.W. 840, 843, 9 L.R.A.,N.S. 508 (Sup. Ct. 1907), describes appropriately this additional burden placed upon a proponent in clear and convincing situations:
>
> > The law requires nothing more than that the result shall not be reached by a mere balancing of doubts or probabilities, but by clear and unequivocal proof of facts upon which a Court or jury may reach a reasonable satisfactory conclusion. In other words the rule does not require absolute certainty, but reasonable certainty of the truth of the ultimate fact in controversy.

See also, Germann v. Matriss, 104 N.J. Super. 466, 470 (App. Div. 1969). The evidence must be "so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy of the truth of the precise facts in issue." Aiello v. Knoll Golf Club. Evidence may be uncontroverted, but yet not clear and convincing. See, Matter of Jobes, 108 N.J. 394, 408 (1987).

With regard to the petitioner's credibility in this case, I stated in the initial decision at page 7 that "it appeared that the petitioner testified truthfully in substantial regard . . . Accordingly, I am persuaded to accept the petitioner's testimony in substantial respects" (emphasis added). I did not state in this opinion, as I have in other opinions, that "it appears that the petitioner testified truthfully in every regard . . . Accordingly, I am persuaded to accept the petitioner's testimony in all respects." While the petitioner's testimony, in and of itself, may have established the petitioner's good character, honesty and integrity by a "preponderance of the evidence" standard, I did not conclude that her testimony, in and of itself, rose to the level of the "clear and convincing

evidence" standard. There were several unanswered questions in this case. She still has not yet made any satisfactory arrangements to attempt to repay the erroneous bank credit.

Sometimes, in an appropriate case, a person's testimony can be so perfectly or totally credible that that testimony in and of itself can rise to a level where it creates enough of a firm belief or conviction that it establishes that person's good character, honesty and integrity. That is not the case here. There are some unanswered questions based upon the petitioner's testimony. Taken as a whole, the petitioner's testimony is credible, but it is not totally credible. The proofs in this case do not rise to a level "much higher than the preponderance standard but somewhat less than the reasonable doubt requirement." Boardwalk Regency at 298. Based upon that finding, it was then incumbent upon the petitioner to come forward with other evidence in order to establish her good character, honesty and integrity by clear and convincing evidence. That is why, in the initial decision I stated:

> The petitioner presented no evidence at the hearing other than her own testimony. She presented no character witnesses, no letters of reference, no job performance evaluations, no certificates of accomplishment or recognition; nothing which would enable me to say that she has established by clear and convincing evidence, her good character, honesty and integrity. [Price at 11]

I did not believe that the petitioner's testimony, in and of itself, was sufficiently credible to establish her good character, honesty and integrity by clear and convincing evidence without any additional proofs.

CONCLUSIONS OF LAW

Upon reassessing the petitioner's good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b, as ordered by the Commission in its order of January 31, 1989, I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

I further **CONCLUDE** that the petitioner no longer requests relief.

DISPOSITION

For the foregoing reasons, it is **ORDERED**, in accordance with N.J.A.C. 1:1-14.4(a), that the application of Jeannie D. Price for the renewal of a casino employee license be **DENIED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 14, 1989
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6/15/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 19 1989
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

798

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

None

WITNESSES

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-128
REGISTRATION NO. 63495-40
OAL DOCKET NO. CCC 8836-88
ORDER NO. 89-38-19

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

THOMAS J. PULLMAN,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 20, 1989,

IT IS on this 19th day of October 1989, ORDERED that the initial decision is modified as follows:

(1) to reject that portion of the initial decision which indicates that it was necessary for the respondent to establish his rehabilitation "by clear and convincing evidence" to avoid a finding of disqualification pursuant to N.J.S.A. 5:12-86(c)(2). Init. dec. at 7. Under an inimical analysis, once the Division of Gaming Enforcement (Division)

establishes disqualifying conduct, the respondent has the burden of going forward with evidence of his rehabilitation, but the ultimate burden of proof remains with the Division. See State v. Waters, Docket No. 84-419. (Commission order June 12, 1987); and

(2) to reject the ALJ's recommendation to revoke the casino hotel employee registration of the respondent. Considering the ALJ's error of placing the burden of establishing rehabilitation by clear and convincing evidence on the respondent, we find that the totality of the rehabilitation evidence presented by the respondent indicates that his 1983 drug offense was not disqualifying pursuant to N.J.S.A. 5:12-86(c)(2). The factors of particular significance to our determination are: The respondent's excellent work record in the casino industry as evidenced by his performance evaluations at the Showboat (D-3 and D-4), certificate of commendation (D-2), and the letters of recommendation from his supervisors (D-6 and D-7); his abstinence from the use of drugs for over a year and a half; and his attendance at drug and alcohol therapy sessions with a drug counselor, who indicates that with continued counseling, the respondent "has a remarkable chance of continued abstinence." (D-9).

IT IS FURTHER ORDERED that the complaint is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8836-88
AGENCY DKT. NO. 89-128

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
THOMAS J. PULLMAN,
Respondent.

James Armstrong, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Michael Blee, Esq., for the respondent (Savio, Reynolds and Drake, attorneys)

Record Closed: June 23, 1989 **Decided:** August 7, 1989

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed with the Casino Control Commission (Commission) on November 2, 1988, seeking revocation of the respondent's casino hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on December 5, 1988, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

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The prehearing conference was initially scheduled for February 17, 1989, and then for March 14, 1989. Both dates were adjourned at the request of the respondent. The prehearing conference was held on April 10, 1989, by way of a telephone conference call. At that time, the parties agreed that the issue in this matter is:

> Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because of a criminal conviction in 1986, and because he allegedly committed a violation in 1983, even though there was no conviction in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g.

The hearing took place on June 23, 1989, in the Office of Administrative Law in Atlantic City, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that the pertinent facts in this matter are not in dispute.

At the hearing, Detective Dennis M. Mason, an Atlantic City police officer, stated that in 1983 he was assigned to the Vice Bureau, and he was told by an informant that a person named "Tommy" was selling marijuana at the Sky Tower Ride on the Central Pier in Atlantic City. The Central Pier is located approximately one block from Resorts Hotel and Casino. Detective Mason testified that the respondent offered to sell him marijuana for $45.00 on September 1, 1983. When Detective Mason offered $35.00, the respondent took out a scale, measured a portion of the marijuana and sold it to Detective Mason for the $35.00. The material purchased by Detective Mason was tested and found to be 8.50 grams of marijuana (P-1).

Mr. Pullman was arrested (P-1), and he was indicted for the possession of a controlled dangerous substance (marijuana) with intent to distribute, contrary to the provisions of N.J.S.A. 2C:35-5a(1) (previously N.J.S.A. 24:21-19a(1)), and the distribution of a controlled dangerous substance, marijuana, contrary to the provisions of N.J.S.A. 2C:35-5a(1) (previously N.J.S.A. 24:21-19a(1)) (P-2). The respondent was admitted into the Pretrial Intervention Program. Pursuant to this program, he was required to meet periodically with a counselor for six months, perform 60 hours of community work and abstain from drugs. Mr. Pullman successfully completed the Pretrial Intervention Program and the indictment against him was dismissed (P-3).

On February 8, 1986, Mr. Pullman was stopped by a police officer for drunk driving and the officer discovered a substance that looked like marijuana in his car. The material was tested and found to be 10.40 grams of marijuana. A complaint was filed against the respondent alleging that he had in his possession of quantity of marijuana under 25 grams, a violation of N.J.S.A. 2C:35-10a(4) (previously N.J.S.A. 24:21-20a(4)) (P-4, P-5). Mr. Pullman pled guilty to this violation and he was given a ten day suspended jail sentence and was fined $200.00 (P-5).

On his own behalf, Mr. Pullman testified that he has lived his entire life in Pleasantville, New Jersey, and that he has been exposed to drugs from an early age. Mr. Pullman started using marijuana and drinking beer when he was twelve years old and in the sixth grade. By the time he was in high school, the respondent was using marijuana, cocaine, amphetamines as well as drinking whiskey. While in high school, Mr. Pullman was on the football and baseball teams and he also took other drugs to improve his athletic abilities. Mr. Pullman continued to use drugs and drink alcoholic beverages during the short period of time he was in college.

In 1983, Mr. Pullman was 21 years old and he was employed by the 7-11 Food Store in Pleasantville, New Jersey. On September 1, 1983, he told a friend that he had purchased a substantial amount of marijuana for his own personal use, and that he wanted to sell some of it since he needed money to make a car payment. This friend, who worked at the Sky Tower Ride on the Central Pier in Atlantic City, suggested that the respondent could sell marijuana near the ride. That afternoon, Mr. Pullman went to the Sky Tower Ride and sold some marijuana to a black man and then to Detective Mason. Mr. Pullman stated that this was the first and only time he has sold drugs in his life.

After he finished the Pretrial Intervention Program, the respondent admitted that he started to use drugs again. At that time in his life, Mr. Pullman stated that he knew that selling drugs was wrong but he did not think there was anything wrong with personally using the drugs.

In 1986, Mr. Pullman admitted that he was stopped for drunk driving and that the police officer found marijuana in his car. The drunk driving charge was dropped; however, Mr. Pullman was convicted of reckless driving and the possession of marijuana under 25 grams. Mr. Pullman stated that the judge told him that if he was arrested again,

he would have to go to jail and that this statement has had a major affect on his life. Although he kept on using drugs for a period of time, Mr. Pullman started to limit the amount of drugs he used and in 1987-88, he quit using drugs.

Because of his concern about this hearing, and because he was still drinking alcoholic beverages, Mr. Pullman enrolled in a substance abuse program with George E. Thompson, as his counselor. Mr. Thompson, a New Jersey Certified Alcoholic Counselor stated in his letters that the respondent has given up alcoholic beverages and has remained drug free, and that this has been confirmed by the periodic urine analysis tests (D-8, D-9). In his letter dated June 19, 1989, Mr. Thompson stated that the respondent's drug and alcohol problems appear to be related to the fact that he was involved with the wrong type of people, that the respondent now understands the consequences of chemical addiction, and that the respondent has a remarkable chance of continuing his abstention from drugs and alcohol (D-8). Mr. Pullman stated that he is now mature enough to realize that the alcohol and drugs have had an adverse affect on his athletic abilities and on his life in general.

Between August 1985 and August 1986, Mr. Pullman worked for Caesars Hotel and Casino (Caesars) as a valet parker. While employed by Caesars, the respondent had a good employment record. He was disciplined on one occasion for getting into a snowball fight with other valet parkers and may have received a warning for being late on one occasion. Daniel Wright, the security operations supervisor of Caesars, stated that the respondent acted in a professional and courteous manner towards hotel guests while employed at Caesars (D-5). In addition, Mr. Wright stated that he has known the respondent for about six years and that both of them play on the same softball team (D-5).

Mr. Pullman quit his job with Caesars since he was working between midnight and 8 a.m. and he wanted to take some educational courses. Between September 17, 1986 and April 30, 1987, Mr. Pullman worked for Reses Pharmacies, Inc., in Pleasantville. In this position, he did various types of jobs including delivering narcotics to nursing homes. By letter dated June 13, 1989, Elizabeth Margenweck, personnel manager of Reses Pharmacies, Inc., stated that the respondent was an excellent, responsible and trustworthy employee (D-1).

Mr. Pullman then got a job as a valet parker with Showboat Hotel and Casino (Showboat) and he currently works there as a valet parker and part-time supervisor. Mr.

Pullman has had an excellent employment record with Showboat (D-2, D-3, D-4, D-5, D-6, D-7), and he has been offered a full-time job as supervisor. He turned down this promotion since he would have to work irregular hours and he wants to continue playing amateur football and baseball and to go back to school to get a college degree. Vince Cicatello, fleet operations manager, and Diane M. Adams, valet parking supervisor, both employed by Showboat, submitted letters on behalf of the respondent. Both of them stated that the respondent is a excellent employee and that he has a good personality which makes him popular with both the customers and his fellow employees (D-6, D-7).

Mr. Pullman admitted that during the time he worked for Caesars and during the initial period of time he worked for Showboat, he was still using drugs; however, he stated that he never used drugs while working at the casino. The respondent is now 26 years old and he plans to remain drug free and to abstain from alcoholic beverages. The respondent would like to continue to work in the casino industry so that he can afford to go to college. According to Mr. Pullman, non-casino employment in the area will not offer him an equivalent salary.

CONCLUSIONS OF LAW

Deputy Attorney General James Armstrong stated that it is the position of the Division that Mr. Pullman sold marijuana in 1983 on the boardwalk near a casino and that his continued drug abuse problem as shown by his 1986 conviction, renders his continued registration inimical to the policies of the Casino Control Act. Mr. Armstrong questioned the sincerity of the respondent's testimony that he was caught selling marijuana the first time he sold it in his life, and he indicated that either the respondent is the most unlucky person in the world or he is a liar.

Michael J. Blee, Esq., on behalf of the respondent, stated that the facts show that the respondent sold marijuana in 1983 and that he had in his possession of a small quanity of marijuana on February 8, 1986, and that since then, he has been rehabilitated. Mr. Blee noted that there is a widespread use of drugs in this country, and that the respondent is a product of his society. The respondent was exposed to drugs at an early age and for a long time associated with people who were also involved with drugs. Mr. Blee argued that after the 1983 incident, the respondent never again attempted to sell drugs even though he continued to be a casual user. Mr. Blee argued that the respondent has recently pulled himself together and realized the self-deprecating affects of the use

of drugs and alcohol. Mr. Blee noted for the last one and one-half years that Mr. Pullman has not used any drugs and that he has voluntarily sought drug counseling and will attend meetings of both Alcoholics Annoymous and Narcotic Annoymous since he is serious in his desire to remain drug and alcohol free. Mr. Blee noted that the respondent has been active in sports, and that he plans to resume his college education and that he can only afford to go to college if he is able to retain a job in the casino industry. In addition, Mr. Blee noted that Mr. Pullman has an excellent work record in the casino industry and with Reses Pharmacies, Inc. Finally, Mr. Blee argued that the respondent has shown that he is rehabilitated and that his continued registration would not be inimical to the policies of the Casino Control Act.

Based on the facts in this matter, I **CONCLUDE** that the Division has shown that the respondent sold marijuana in 1983 to an undercover agent and also that he had marijuana in his possession in 1986. These acts constitute criminal violations; however, they are not automatic statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g. In order to decide whether these criminal acts render the respondent's continued registration inimical pursuant to the provisions of N.J.S.A. 5:12-86(c)2, it is necessary to consider the circumstances underlying the incidences as well as the respondent's subsequent conduct, i.e., his rehabilitation. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986); In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979).

The Casino Control Act sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of registration:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision. [N.J.S.A. 5:12-91d]

As to rehabilitation, Mr. Blee, on behalf of the respondent, has very eloquently presented all of the factors relevant to this issue. In brief, the respondent grew up in a drug using society and has been a user for many years and up until approximately a year and one-half ago. In 1983, Mr. Pullman was able to remain drug free during the six month term of the Pretrial Intervention Program; however, he thereafter went back to using drugs. Even though Mr. Pullman testified that the judge's statement to him in 1986, had an impact on him since he did not want to go to jail, by his own admission he continued to use some drugs for a substantial period thereafter. It was not until after the Division had recommended the revocation of his casino hotel registration that Mr. Pullman sought assistance as to his drug and alcohol problems, and according to his counselor, Mr. Thompson, he still needs continuing weekly counseling (D-8).

It has been recognized that drug use is a serious problem in this country and that the Commission is especially concerned about the use of drugs by casino employees. By law, the Commission exercises a control over all casino employees in order to sustain the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations in general, N.J.S.A. 5:12-1a(6).

In view of the facts in this matter, I **CONCLUDE** that insufficient time has lapsed since Mr. Pullman has stopped using drugs and since he has initiated the counseling program for him to show by clear and convincing evidence his rehabilitation pursuant to the provisions of N.J.S.A. 5:12-91d. Therefore, I **CONCLUDE** that Mr. Pullman's continued registration would be inimical pursuant to the provisions of N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g, and I **ORDER** that the casino hotel employee registration of Thomas J. Pullman be **REVOKED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 7, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

3/7/89
DATE

Heidi M. Vandergrift
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 10 1989
DATE

Jayne LaVenia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Investigation Report regarding the arrest of Thomas J. Pullman, arrest report regarding Thomas J. Pullman and the complaint filed against Thomas J. Pullman

P-2 The Indictment filed against Thomas J. Pullman

P-3 Order of Dismissal, dated July 6, 1984

P-4 Margate City Police Report regarding the arrest of Thomas J. Pullman on February 8, 1986, including the complaint, laboratory report of the New Jersey State Police Forensic Science Bureau, the drinking-driving report, the alcohol influence report and the disposition as to the complaint

P-5 Summons - State of New Jersey v. Thomas J. Pullman, February 8, 1986

For the Respondent:

D-1 Letter from Elizabeth Margenweck, Personnel Manager of Reses Pharmacies, Inc., dated June 13, 1989

D-2 Certificate of Commendation issued to Thomas J. Pullman by Showboat Hotel and Casino

D-3 Showboat Employee Performance Appraisal, dated April 11, 1988

D-4 Showboat Employee Performance Appraisal, dated April 11, 1989

D-5 Letter from Daniel Wright, Security Operations Supervisor of Caesars Hotel and Casino, dated May 11, 1989

D-6 Letter from Vince Cicatiello, Fleet Operations Manager for Showboat Hotel, Casino and Bowling Center, dated May 12, 1989

D-7 Letter from Diane M. Adams, Valet Parking Supervisor at Showboat Hotel, Casino and Bowling Center, dated May 12, 1989

D-8 Letter from George E. Thompson, C.A.C., dated June 19, 1989

D-9 Letter from George E. Thompson, C.A.C., with attached urine analysis test for Thomas J. Pullman

WITNESSES:

For the Petitioner:

Detective Dennis M. Mason

For the Respondent:

Thomas J. Pullman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-266
APPLICATION NO. 50454-21
REGISTRATION NO. 34584-40
OAL DOCKET NO. CCC 106-89
ORDER NO. 89-41-21

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF LUIS A. QUINTANA

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 19th day of October 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 106-89
AGENCY DKT. NO. 89-EA-266

LUIS ANGEL QUINTANA,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Luis Angel Quintana, petitioner, pro se
R. Lane Stebbins, Deputy Attorney General, for respondent, (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 21, 1989 **Decided: August 31, 1989**

BEFORE LILLARD E. LAW, ALJ:



STATEMENT OF THE CASE

The Division of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license no. 50454-21 issued to petitioner Luis Angel Quintana. The Division alleges, among other things, that petitioner was in receipt of benefits from the New Jersey Division of Unemployment and Disability Insurance program in the amount of $2,379 to which he was not entitled.

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PROCEDURAL ASPECTS

The Division filed its letter of objection with the Commission on November 16, 1988. On December 26, 1988, petitioner requested a hearing. On January 3, 1989, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on March 20, 1989, followed by a hearing which was held on July 17, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was closed on July 21, 1989, upon receipt of a document marked P-4 in evidence.

ISSUES

The issues to be determined by this tribunal are as follows:

A. **Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, Theft by Deception.**

B. **Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.**

C. **Whether petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).**

UNCONTESTED FACTS

Based upon the testimony and documents proffered at the hearing and having given [redacted] weight thereto; the following facts are neither contested nor in dispute. [redacted]ore, these uncontested facts are hereby adopted as FINDINGS OF FACT in th[redacted]ter.

Petitioner is a 28 year old male, married with two minor children. He is also responsible for child support for two other minor children. He was first licensed as a casino employee-craps dealer on or about May 2, 1984, and commenced employment with the Boardwalk Regency Corp., t/a Caesars Hotel/Casino (Caesars).

From November 3, 1984 through January 12, 1985 and from February 2, 1985 through March 30, 1985, petitioner was in receipt of Unemployment Insurance benefits (UIB) while gainfully employed at Caesars. Upon being interviewed by Agent John Maggs of the Division's License Renewal Unit on July 6, 1988, petitioner admitted to receipt of the UIB to which he was not entitled in the amount of $2,379. Petitioner also admitted that a judgment had been entered against him in Superior Court, Mercer County by the Division of Unemployment and Disability Insurance (UDI), dated September 1, 1987. In addition to the $2,379 fraudulently received by petitioner, the Court also assigned a fine of $594.75 together with the interest of $201.35 accumulated for a total of $3,175.35 due and owing. Petitioner had not made any payments to satisfy this debt as of July 6, 1988.

On July 21, 1989, petitioner presented evidence, as provided by this tribunal at the close of the hearing on July 17, 1989, that the debt had been satisfied as of September 26, 1988 in the amount of $3,197.59. This represented the original debt of $2,379, together with the fine of $594.75 and interest of $223.84.

For the present year petitioner earns approximately $30,000.

CONTESTED FACTS

Petitioner testified, among other things, that prior to his employment at Caesars he had been employed off and on, as a mail carrier by the United States Postal Service. When he was out of work he would apply and be granted UIB, therefore, he had had prior experience collecting unemployment benefits. In or about October 1985, while an employee at Caesars as a food service attendant, petitioner was collecting UIB due to his state of unemployment. At about the same time, pet[redacted] mother, who was also employed by Caesars, became ill and was unable to [redacted] Petitioner was living with his mother at the time and when he returned to work at Caesars in November 1984, he failed to advise the UIB of the fact that he was reemployed.

Petitioner asserted that the UIB money was needed to provide his mother with some financial stability and also for petitioner to meet his obligation to pay child support for the two minor children he fathered. Petitioner contends that he did not accept the UIB with malicious intent to defraud.

Petitioner testified that he believed that the UIB, to which he contributed, was a form of social security and that he could draw on it when needed. He understands now that he was not entitled to the money when he was gainfully employed.

DISCUSSION AND CONCLUSIONS

Section 86c Offense

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that petitioner's misconduct constitutes a disqualifying offense under section 86c of the Act. It asserts that petitioner's receipt of UIB to which he was not entitled in the amount of $2,379 is, under the New Jersey Code of Criminal Justice, the crime of theft by deception. N.J.S.A. 2C:20-4. Notwithstanding that petitioner had not been prosecuted for the offenses, the Division cites section 86g of the Act which provides that licensure may be denied to a person who has committed an offense enumerated in section 86c(1), whether or not the offense had been prosecuted under the criminal laws of this State.

Section 86c(1) of the Act sets forth the offenses under the New Jersey Code of Criminal Justice which, if committed, constitutes per se disqualification for casino employee licensure. Section 86c(1) lists, as a class of disqualifying offenses, those involving theft and related offenses which constitute crimes of the second or third degree under N.J.S.A. 20C:20-1 et seq. Theft by deception, N.J.S.A. 2C:20-4, is included in that class. N.J.S.A. 2C:20-2b provides for the grading of theft offenses and states that:

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds $500.00 but is less than $75,000; ....

The record demonstrates that petitioner was in receipt of UIB in excess of $500. I **CONCLUDE**, therefore, that the Division has clearly established, by a preponderance of the credible evidence, that petitioner committed an offense which disqualifies him from licensure in the casino industry. See: *State v. Moore*, 158 N.J. Super. 68 (App. Div. 1978).

Rehabilitation

An applicant and/or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the

recommendation of persons who have or have had the applicant (licensure) under their supervision.

In consideration of petitioner's claim of rehabilitation, the following has been found in this record:

1. Petitioner is presently the holder of casino employee license no. 50454-21. He has been employed as a craps dealer since 1985 at Caesars under his license. He now seeks to have his license renewed to perform the duties of a boxperson at the casino.

2. Although petitioner was not criminally prosecuted for receiving the UIB to which he was not entitled, a judgment was levied against him by the New Jersey Superior Court for the principal debt, a substantial fine, plus interest. The offense was serious whereby petitioner was in receipt of money in an amount in excess of $500 which, under the New Jersey Criminal Code, constitutes an indictable offense of the third degree.

3. & 4. Prior to November 3, 1984, petitioner was unemployed and legitimately in receipt of UIB. On or about November 3, 1984, petitioner was reemployed and failed to advise the Division of Unemployment and Disability Insurance of his reemployment. Consequently, petitioner was in receipt of UIB, to which he was not entitled during the period November 3, 1984 through January 12, 1985. Subsequently, on February 2, 1985, petitioner again received UIB while employed and continued to receive the monies through March 30, 1985.

Petitioner claims he needed the money because his mother was ill and unable to work and that he had child support obligations to meet.

5. & [redacted] Petitioner was 23 years of age when he committed the offense in November 1984 through January 1985 and when he repeated the offense in February through March 1985.

7. There were no social conditions or circumstances which contributed to the offenses.

8. Petitioner presented evidence that he satisfied the judgment against him and repaid the UIB debt in full, with interest plus a substantial fine. This repayment occurred on or about September 26, 1988, some three years after the commission of the offense. Petitioner has shown remorse and contrition for the offense and declares that such an offense will not occur in the future.

In consideration of the above, I **FIND** and **CONCLUDE** that petitioner has affirmatively demonstrated his rehabilitation pursuant to section 90h of the Act.

Section 89b(2)

Pursuant to N.J.S.A. 5:12-89b(2), petitioner is required to produce evidence of his good character, honesty and integrity by the standard of clear and convincing evidence to be issued or to maintain his casino employee license. Petitioner produced no witnesses to testify on his behalf. He did proffer two documents written by friends and coworkers who stated they knew petitioner and that he was a dependable and honest employee. None of the writers indicated that they were aware of petitioner's offenses, which forms the basis of the Division's complaint against him.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

One [redacted] two character letters produced by petitioner was from William E. Thompson, [redacted] which states as follows:

> I have known Mr. Angelo Quintana for the past five years. He is a very decent, hard-working man. I not only know him as a friend, but I have also worked with him for a long time. Mr. Quintana is trying and succeeding in providing his wife and two infant sons with the very best that he can. He has a very good job and works extremely hard. He has

> shown that he is able to meet tremendous amounts of responsibility that he faces both at work and at home.
>
> Mr. Quintana did not have many of the opportunities that we may have had growing up and he has proven himself to be extremely capable. It is very difficult for young adults today, but Mr. Quintana has managed through additional education and hard work to provide his family with a lovely home and all of the advantages that he feels they deserve. (P-1).

Having carefully considered all of the evidence, including the fact that petitioner's offense of collecting UIB while employed is the only blemish on his record, I **CONCLUDE** that he has met his burden of proof and that he does possess the good character, honesty and integrity for licensure as a casino employee. He has convinced this tribunal, by a reasonable certainty, that he is a good person who will honesty perform his business and civic duty with integrity.

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license no. 50454-21 issued to petitioner Luis Angel Quintana be and is hereby **RENEWED**.

It is further **ORDERED** that the Division's complaint against petitioner be and is hereby **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

31 August 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

9-5-89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 6 1989
DATE

Elizabeth J. Konzan
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Luis A. Quintana

For the Respondent:

John Maggs

EXHIBIT LIST

For the Petitioner:

P-1 Letter dated July 3, 1989 from William Thompson
P-2 Handwritten note dated July 16, 1989 from Michael Joseph, Hector Cruz, David Hunt
P-3 Receipt from Division of Unemployment and Disability
P-4 Computer printout from Division of Unemployment and Disability marked Balance Paid in Full

For the Respondent:

R-1 Computer printout from Division of Unemployment and Disability
R-2 Determination and demand for refund and schedule of overpayments
R-3 Determination and demand for refund and schedule of overpayments
R-4 Document from Division of Unemployment and Disability
R-5 Field investigation conducted by Division of Unemployment and Disability
R-6 Renewal application form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-17
REGISTRATION NO. 74493-40
OAL DOCKET NO. CCC 7707-88
ORDER NO. 89-29-11

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

DORIS E. REYNOLDS,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and exceptions having bee filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 19, 1989,

IT IS on this 14th day of August 1989, ORDERED that the initial decision is modified as follows:

> (1) to correct the ALJ's conclusion that the Division failed to prove the disqualifying offense of attempted theft by deception contrary to N.J.S.A. 2C:5-1 and 2C:20-4. To the contrary, even though the offense was not prosecuted, the respondent admitted that by fraud (uttering a forged instrument) she purposely attempted to obtain $600 from the Playboy Hotel and Casino. These acts constitute an attempted theft by deception and are disqualifying pursuant to N.J.S.A. 5:12-86(c)(1) and (g). The

ALJ's conclusion that the Legislature did not intend this conduct to constitute this offense is in error. The crimes of attempted theft by deception and uttering a forged instrument are not coextensive and therefore it is appropriate to proceed under either offense. See State v. Covington 59 N.J. 536 (1971). In this particular instance the respondent's acts constituted both crimes.

(2) to find, based on the ALJ's discussion of the rehabilitation factors which was conducted as part of his inimical analysis, that the respondent established her rehabilitation from the disqualifying offense of attempted theft by deception pursuant to N.J.S.A. 5:12-91(d); and

(3) to disavow the ALJ's suggestion to the effect that individuals in certain positions requiring registration as a casino hotel employee, such as a casino hotel maid, can not commit inimical offenses or that such a factor is dispositive of the issue of rehabilitation. It is only one among many factors to be considered.

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7707-88
AGENCY DKT. NO. 89-17

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
DORIS E. REYNOLDS,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Doris E. Reynolds, respondent pro se

Record Closed: April 25, 1989 **Decided: June 8, 1989**

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint on July 14, 1988, with the Casino Control Commission (Commission) seeking revocation of the respondent's casino hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on October 24, 1988, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. to be heard as a contested case. A prehearing conference was held on January 20, 1989, identifying the issues to be resolved at the plenary hearing as follows:

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1. Whether the respondent's conduct referred to in the complaint was equivalent to the crime of attempted theft by deception contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4.

If so, and the crime was in the second or third degree (theft over $500) it would be a disqualification for casino employee registration according to N.J.S.A. 5:12-86c and 91b. This is so even if the conduct was not prosecuted under the laws of this state. N.J.S.A. 5:12-86g.

2. Whether the respondent's continued registration is inimical to the policy of the Casino Control Act according to N.J.S.A. 5:12-86c because she is alleged to have committed a violation of N.J.S.A. 2C:21-1a(3) in 1982, which is the crime of uttering a forged instrument.

3. Whether the respondent can demonstrate rehabilitation as permitted by N.J.S.A. 5:12-91d.

THE DIVISION'S EVIDENCE

The Division proved and the respondent admitted that on February 14, 1983 she was convicted of the crime of intending to defraud another by way of a stolen credit card contrary to N.J.S.A. 2C:21-6d(1), a fourth degree offense. She was also convicted on the same day of the companion crime of uttering a forged writing; a "cash call check" in the amount of $600, contrary to N.J.S.A. 2C:21-1a(3). This too, was a fourth degree offense. *State v. Ott*, 181 N.J. Super. 559, 564 (1981).

The respondent admitted at the hearing that she was attempting to obtain $600 from the Playboy Casino when she executed the fraudulent check on the stolen credit card.

The respondent was so naive that she did not know the uses to which a stolen credit card could be put, and, when she was instructed in the criminal arts by a friend, she did not know enough to conform the signature she forged to the signature on the credit card. She was apprehended at the scene.

ISSUE ONE

Are these two fourth degree crimes, taken together, equivalent to the third degree crimes of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4, attempted theft by deception over $500, for the purpose of resolving the first issue against the respondent?

The same issue, but for another purpose, was discussed in *State v. Reed*, 174 N.J. Super. 407, (Resent. Panel 1980) vacated 183 N.J. Super. 184 (App. Div. 1982) cert. denied 91 N.J. 228.

When the New Jersey Criminal Code designated as 2C became effective in 1979, persons convicted under the prior criminal code designated as 2A, and not yet sentenced on the effective date of 2C, could elect to be sentenced under the new code. N.J.S.A. 2C:1-1d(2).

Reed had been convicted of 2A forgery. He requested sentencing under 2C. A resentencing panel concluded that uttering a forged instrument was the equivalent of theft by deception N.J.S.A. 2C:20-4, under the new code. 174 N.J. Super. at 410. Therefore for the purpose of sentencing, Reed was considered to have been convicted of a third degree offense since his forged instrument was in excess of $500. The Appellate Division reversed that determination at 183 N.J. Super., at 191, and held that forgery was a fourth degree crime. It agreed with Judge McGann's decision in *Ott*, supra, in which he found that the legislature created an anomaly and he construed the language of the statute strictly. 181 N.J. Super. at 562.

CONCLUSION

I am therefore not persuaded that the respondent's conduct in executing a "cash call check" in the amount of $500 is equivalent to the third degree crime of theft by deception.

The fourth degree crime of uttering a forged instrument is not included in the list of statutory disqualifiers found at N.J.S.A. 5:12-86c.

I **CONCLUDE** that the respondent did not commit an act which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

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ISSUES TWO AND THREE

The second and third issues listed in the prehearing order are inimicality and rehabilitation. Inimicality has been defined by the Commission 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 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 re Resorts Casino Application*, 10 N.J.A.R. 244 (1979) 254.

Proof of rehabilitation permits a registrant who has been convicted of a disqualifying offense or who has been shown to have committed conduct equivalent to a disqualifying offense to escape the onus of revocation. N.J.S.A. 5:12-91d.

Rehabilitation is also a factor to be considered in the inimicality analysis. *Donna Davis v. Division of Gaming Enforcement*, 8 N.J.A.R. 301 (1986).

Rehabilitation factors to be considered according to the Act are: (1) the nature and duties of the registrant's position; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the registrant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation

in correctional work release programs, or the recommendation of persons who have or have had the registrant under their supervision. N.J.S.A. 5:12-91d.

The respondent offered evidence of her rehabilitation. Her supervisors at Showboat Casino Hotel write that she is "a hardworking employee who takes direction well and is a team player. She is an excellent employee and an asset to Showboat Hotel."

Respondent testified that she is 29 years old and supports 4 children and one grandchild. She acknowledged her police record and indicated that she had changed in the past two years and did not want her children to grow up doing the things she did. The respondent had previously been a welfare recipient but now she says she is "strong enough to get a job and take care of (her) own kids."

She has no assistance with the children, either from their father, Aid to Families with Dependent Children, or by way of food stamps. Because of her salary her grandchild is not even eligible for medicaid. See N.J.A.C. 10:82-3.14.Her union assists her by providing an HMO plan.

Respondent brings home $226 per week from her job as a maid at Showboat. Her monthly rent is $227. Respondent works 5 days a week from 10:00 a.m. to 6:00 p.m. - is off Tuesday and Wednesday - and usually cooks for the family when she gets home.

The Division offered evidence tending to show that the respondent was not rehabilitated. She was convicted of shoplifting in 1985 and in 1987 she failed to report the arrest in her sworn Personal History Disclosure Form (PHDF4).

The respondent claims that her rehabilitation commenced with her reemployment in the casino industry in 1987 when she became a maid at Showboat Hotel and Casino. Based on the Division's evidence, she could not have been rehabilitated earlier.

Rehabilitation is a process and not an event. It is accomplished by slow and painstaking steps. It begins when one takes responsibility for oneself and ones loved

ones. The process is evident in the respondent's determination to survive and to make ends meet on a salary below the level of poverty.

REHABILITATION FACTORS

1. The respondent is a maid at a casino hotel. She does not work on the casino floor or have any gaming responsibilities.

2. The offense of uttering a forgery is serious, despite the legislatures grading of the offense in the fourth degree. Check forgers are an anathema to the casino gaming industry.

3. The respondent found a pocketbook and stole a credit card from it. She attempted to use the credit card to obtain $600 by writing a cash call check at the Playboy Casino. As a result of her inexperience, she was apprehended at the scene.

4. The offense occurred on November 17, 1982.

5. The respondent was 23 years old when the offense was committed.

6. The offense was isolated and has not been repeated, although the respondent was convicted of shoplifting in 1985.

7. No unusual social conditions contributed to this offense. The respondent blamed her poverty and the fact that it was the Christmas season.

8. The respondent's evidence of rehabilitation includes a satisfactory recommendation from her supervisor and a work and family ethic which has persisted for two years in spite of poverty and long hours of work at the hotel and at home.

Hotel maids, like food servers and public area cleaners, are remote from gaming operations. They have little or no opportunity to "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." Neither would their employment in such positions "undermine public confidence in the integrity of the regulatory process and of gaming operations." These are the tests of inimicality expressed in the *Resorts* opinion supra, 254. Hotel maids simply do not have the power, authority or control necessary to thwart the regulatory process or undermine public confidence in gaming.

I **CONCLUDE** that the respondent's continued registration would not be inimical to casino gaming or to casino operations.

I **ORDER** that the complaint be **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 8, 1988
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6/12/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 13 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Doris E. Reynolds

For the Respondent:

Doris E. Reynolds

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 Judgment of Conviction
P-3 New Jersey State Police Investigation Report
P-4 Egg Harbor Township Police Department Arrest Report
P-5 Application, Personal History Disclosure Form 4A

For the Respondent:

R-1 Letter of recommendation from Marsha Stern, Director of Housekeeping and Antoinette Moore, Assistant Director

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-138
REGISTRATION NO. 77423-40
OAL DOCKET NO. CCC 112-89
ORDER NO. 89-38-17

STATE OF NEW JERSEY, DEPARTMENT DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. ISAAC RIGGINS, Respondent.	AMENDED ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 20, 1989,

IT IS on this 13th day of November 1989, ORDERED that the initial decision is modified as follows:

> The Commission accepts the ALJ's conclusions that the respondent's offense of theft by unlawful taking in violation of 2C:20-3 constitutes a third degree offense because it was from the person of the victim within the meaning of N.J.S.A. 2C:20-2 and that this offense is disqualfifuying pursuant to both N.J.S.A. 5:12-86(c)(1) and -86(c)(2). However, because the respondent was never convicted of this offense we hereby modify the initial decision to add a reference to N.J.S.A. 5:12-86(g). Further, for the reasons fully discussed in the ALJ's analysis of

the inimical issue, we find that the respondent failed to affirmatively demonstrate his rehabilitation from this offense.

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Isaac Riggins is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 112-89
AGENCY DKT. NO. 89-138

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ISAAC RIGGINS,
Respondent.

Nancy Scharff, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Isaac Riggins, respondent, pro se

Record Closed: July 11, 1989 Decided: August 1, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on November 18, 1988, alleging that respondent Isaac Riggins had been convicted of a crime which is listed as a statutory disqualification to hold a casino hotel employee registration under section 86c(1) of the Casino Control Act (Act).

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PROCEDURAL ASPECTS

Subsequent to its receipt of the Division's complaint, the Commission gave respondent notice of same. On December 14, 1988, respondent requested a hearing. On January 5, 1989, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 20, 1989, followed by a plenary hearing held on July 11, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The herein record was closed on July 11, 1989.

ISSUES

The specific issue to be resolved by this administrative tribunal, as set forth in the Prehearing Order dated March 21, 1989, is as follows:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.A.C. 2C:20-3, Theft by Unlawful Taking, and whether the offense is disqualifying pursuant to section 86c(2) of the Casino Control Act?

UNCONTESTED FACTS

Based upon the testimony and other evidence offered at the hearing, the following facts are neither contested nor in dispute, Therefore, I hereby adopt, by reference, the following as my **FINDINGS OF FACT** in this matter:

Respondent, who is presently 42 years of age, holds casino hotel employee registration no. 77423-40 and is employed by the Atlantis (Trump Regency) Hotel as a cafeteria supervisor in the hotel. He has held his hotel employee registration and has been employed by Atlantis for approximately two years. He has had no other casino related employment. Respondent is married, but separated from his wife. However, he is financially responsible for his two minor children; a son seven and a daughter twelve years of age.

On or about August 6, 1988, respondent had spent the afternoon gambling at the Trump Plaza Casino located at Mississippi Avenue and the Boardwalk, Atlantic City, New Jersey. Respondent had lost all of his money at the gaming tables. While walking through the casino, he observed a female with a shoulder strap purse on her person. Respondent observed that the purse was opened with a wallet inside the open purse which had a $20 bill, however, the bill was attached to the wallet. The wallet came out of the purse when respondent pulled on the $20 bill. Two plainclothes security officers immediately pursued respondent as respondent attempted to walk away from the scene. Respondent saw the men approach him and he then threw the wallet in a nearby trash receptacle. The wallet was retrieved by the security officers who also apprehended respondent.

The female, from whom respondent took the wallet, is a security officer who was operating as a pickpocket decoy in Trump Plaza on August 6, 1988. Subsequent to his apprehension by the security officers, respondent was taken to the Division's New Jersey State Police Casino Unit. There, respondent was advised of his constitutional rights, which respondent waived and admitted to taking the wallet from the female undercover security officer's purse containing the $20 bill.

Respondent was charged with the offense of theft by unlawful taking under N.J.S.A. 2C:20-3a. On August 8, 1988, respondent was found guilty of the charge in the Atlantic City Municipal Court. The court imposed a fine of $75 for the offense, plus $25 in costs. Respondent was also assessed an amount of $30 for the Violent Crimes Compensation Board (VCCB).

TESTIMONIAL EVIDENCE

Respondent was called by the Division and also testified on his own behalf. He asserted that he developed a serious gambling problem after he began working in the casino industry. He would gamble two or three times per week at casinos other than the Atlantis. Respondent asserted that he had lost all of his money on August 6, 1988 and when he saw the $20 sticking out of the purse he tried to take it. Respondent contends that his gambling made him lose control of himself although he admits he is responsible for his actions.

Respondent asserted that he gambled subsequent to his arrest on August 6, 1988. He gambled the last time approximately two weeks after his arrest and has not gambled since. Respondent claimed that he was reformed and rehabilitated despite the fact that he sought no gambling counseling nor has he been involved with Gambler's Anonymous. He contended that it does not bother him to be near gambling activities and that he is not tempted by it. Respondent claims that he is a working man and he wants to keep himself on the right track.

FINDINGS OF FACT

In addition to those uncontested facts set forth hereinbefore, I **FIND** the following **FACTS** in this matter:

1. Respondent is a compulsive gambler who became addicted subsequent to his employment in the casino/hotel industry.

2. For a period of approximately one and one half years while he was employed in food service at the Atlantis Hotel, respondent would gamble in casinos other than the Atlantis on the average of two to three times per week.

3. On at least one occasion, August 6, 1988, respondent lost all of the money in his possession at gaming at the Trump Plaza Casino.

4. Subsequent to his arrest and charged with the offense of theft by unlawful taking, N.J.S.A. 2C:20-3a, respondent gambled at least once thereafter.

5. Respondent has not sought counseling for his gambling addiction nor has he participated in Gambler's Anonymous.

DISCUSSION AND CONCLUSIONS

Section 86c(1)

Under the provision of N.J.S.A. 5:12-121b(8) the New Jersey Legislature established that licensure under the Act is a revocable privilege "... conditioned upon the proper and continued qualification of the individual licensee." Section 129

(1) of the Act grants the Commission with the authority to impose sanctions upon persons licensed or registered and to:

> Revoke the license or registration of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license or registration.

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under N.J.S.A. 5:12-86c(1); i.e., a conviction of theft by unlawful taking under N.J.S.A. 2C:20-3a.

Pursuant to the New Jersey Code of Criminal Justice, N.J.S.A. 2C:20-3b. provides for the grading of theft offenses where, at subsection (2) it states that theft constitutes a crime of the third degree if:

> xxx
> (d) It is from the person of the victim;
> xxx

Section 86c(1) of the Act provides that the Commission shall deny a casino license (registration) to any applicant who is disqualified on the basis of the commission of theft and related offenses which constitute crimes of the second or third degree. N.J.S.A. 2C:20-1 et seq.

Respondent admits to the offense of theft by unlawful taking and that the taking was "from the person of the victim," a crime of the third degree. I **CONCLUDE**, therefore, that the herein record has established, by way of uncontested facts and respondent's admission, the Division has carried its burden of proof by a preponderance of the credible evidence to demonstrate that Isaac Riggins is disqualified from holding a casino hotel employee registration.

Section 86c(2)

The statutory provision at N.J.S.A. 5:12-86c(2) is commonly referred to as the "inimical clause" of the Casino Control Act. (Act). The Appellant Division of Superior

Court has held that "inimical," with regards to the casino industry, means "adverse to the policy of the Act and gaming operation." *In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54*, (N.J. App. Div. July 11, 1985, A-993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17). The standards by which section 86c(2) are to be applied in individual cases where a determination is to be made as to whether an offense is inimical to the purposes and policies of the Act were set forth by the Commission in *In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License*, Casino Control Commission No. 79-CL-1, (February 26, 1979), where it said at 15:

> ...The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

In analyzing the facts to determine whether the offender is suitable for licensure or registration under the Act, the Commission suggests that the use of the rehabilitation factors, as found at N.J.S.A. 5:12-91d, provide a more structured, yet flexible framework for such analysis. *Application of Edward Bershad Company, t/a Penn Vending Company for a Casino Service Industry License,* ___ N.J.A.R. ___ (Commission Decision, March 28, 1989). Those factors, as set forth at section 91d of the Act, 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 (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of persons who have or have had the applicant (licensure) under their supervision.

The herein record demonstrates that respondent is and has been employed in the food preparation and service area of the hotel operation of the hotel and casino industry. He is presently employed at the Trump Regency Hotel (formerly the Atlantis) as a cafeteria supervisor.

On August 6, 1988, respondent had been gambling at the Trump Plaza Casino and lost all of the money in his possession at the gaming tables. Subsequently, while walking through the casino, respondent observed a $20 bill protruding from a wallet inside of a purse. The purse had a shoulder strap and was held by a female, who happened to be an undercover state police trooper acting as a decoy for pickpockets. Respondent attempted to grab the $20 bill, however, it was attached to the wallet and came out of the purse with the $20 bill. Respondent was immediately apprehended and subsequently charged and found guilty of the offense of theft by unlawful taking. At the time of the offense, respondent was approximately 41 years of age.

The offense of theft by unlawful taking committed by respondent on August 6, 1988, was an isolated incident. There is no evidence on this record to indicate that respondent had a prior criminal record or that he had committed a similar offense. Respondent contends, moreover, that he committed the offense as a consequence of his gambling losses and his addiction to gambling.

There were no social conditions extant which may have contributed to respondent's conduct. Respondent asserts that he lost control to his gambling addiction which resulted in his commission of the offense of theft by unlawful taking. Although respondent admits to being a compulsive gambler and having an addiction to gaming activities, he has not sought counseling for his behavior. Nor has he participated with any support group or individuals suffering with the unwholesome condition; i.e., Gamblers Anonymous. Rather, respondent asserts that

he has overcome his addiction through self-help without the need of outside intervention.

There is little doubt that respondent's conduct on August 6, 1988, was "adverse to the policy of the [Casino Control] Act and gaming operation." *In the matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54*. At the time respondent committed the offense, he was the holder of a casino hotel employee registration and employed in the hotel/casino industry. Respondent's continued participation as an employee within the industry would "justifiably undermine public confidence in the integrity of ... gaming operations ..." *Resorts*, at 15.

I **CONCLUDE**, therefore, that respondent is disqualified from continued registration as a casino hotel employee, pursuant to N.J.S.A. 5:12-86c(2), by virtue of his commission of the offense of theft by unlawful taking in a casino which is determined to be inimical to the policy of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that the casino hotel employee registration of Isaac Riggins be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1 August 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8/9/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 9 1989
DATE

Jayne Lewis/ks
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Isaac Riggins

For the Respondent:

Isaac Riggins

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police Report, dated August 6, 1989
P-2 Written Statements of Edward Nichols, R. Swine, and Judith States, Trump Plaza
P-3 New Jersey State Police Arrest Report, dated August 6, 1988
P-4 Complaint and Summons, Atlantic City Municipal Court
P-5 Atlantic City Municipal Court Disposition

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-136
LICENSE NO. 33773-21
OAL DOCKET NO. CCC 8827-88
ORDER NO. 89-31-16

APPLICATION OF ROBERT K. ROBINS FOR
RENEWAL OF HIS CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 9th day of August 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8827-88
AGENCY DKT. NO. 89-EA-136

ROBERT K. ROBINS,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Aaron M. Smith, Esq., for petitioner

Charles F. Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 18, 1989 Decided: June 2, 1989

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Robert K. Robins (petitioner) for renewal of his casino employee license. By letter report to the Casino Control Commission dated September 2, 1988, the Division of Gaming Enforcement (respondent) objected to renewal of licensure, based upon the petitioner's alleged conviction upon a plea of guilty on April 27, 1987, to a charge of false reports to law enforcement authorities, contrary to N.J.S.A. 2C:28-4, a disorderly persons offense. There is one issue to be resolved:

Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

The petitioner's request for a hearing on his renewal application was received by the Casino Control Commission in November 1988. On December 5, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on February 28, 1989. The hearing was thereafter held as scheduled on April 18, 1989, in West Berlin, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner, who is 37 years old, resides with his mother in Cherry Hill, New Jersey. He makes the mortgage payments on the family home. The petitioner has a bachelor's degree in Urban Planning from Rutgers University.

The petitioner's employment in the casino industry began in April 1983 when he was hired at the Tropicana Casino Hotel as a cage cashier. He began working there as a dealer in 1984. The petitioner's immediate cage cashier supervisor, Van C. Bryant, wrote in a letter dated April 14, 1989 (Exhibit P-6), that the petitioner had a high level of performance and that he was a man of sincere responsibility and integrity. Satisfactory dealer evaluations for the petitioner dated October 10, 1987 and January 27, 1988, were admitted into evidence as Exhibits P-9 and P-10.

At the hearing, the petitioner testified candidly concerning his indictment in July 1986 on a charge of attempted theft by deception, contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4 (Exhibit R-1). According to the petitioner, he was approached by Frank Roye, who had attended high school with the petitioner. Roye drove expensive cars and appeared to be well to do. Roye commented that the petitioner seemed to be successful and he suggested that the two of them start a car rental business in Pennsauken, New Jersey. The petitioner agreed to the idea and an office and furniture for the business were obtained. The petitioner stated that they were

financing the business from earnings and savings. Eventually the business had everything it needed except for the cars which would be rented to customers.

Roye suggested to the petitioner that the petitioner purchase from Roye a remodeled Porsche and that Roye would put the proceeds back into the business. The petitioner agreed to finance the purchase with a loan and Roye agreed to get the vehicle back from his girlfriend in Chicago. However, a few days later, Roye contacted the petitioner and said that the car had been stolen from his girlfriend. The petitioner testified that Roye appeared to be upset about not being able to sell the vehicle to the petitioner and put the proceeds back into the business.

At that point, Roye suggested that the petitioner go through with the purchase of the vehicle anyway and then report that it had been stolen. The petitioner proceeded to have the vehicle insured with Travelers Insurance Company after Roye had already told him that the vehicle was stolen. The petitioner testified sincerely that he agreed to report to the police and the insurance company that the vehicle had been stolen because no money was coming into the business and they wanted to obtain the insurance proceeds to help with the purchase of rental cars. He knew it was wrong, but because of the financial burdens he faced, the petitioner made the false reports in January 1986.

On June 29, 1987, the petitioner pled guilty to a charge of making a false report to law enforcement authorities, contrary to N.J.S.A. 2C:28-4(b), a disorderly persons offense, and the aforementioned indictment was dismissed. The petitioner was sentenced to 18 months probation with the condition of 30 hours community service work. He was ordered to have no contact with Frank Roye and was required to pay a fine of $500. Honorable John S. Holston, Jr., J.S.C., identified the following mitigating factors in his statement for reasons for sentencing (Exhibit R-2):

> The character and attitude of the defendant indicate that he is unlikely to commit another offense. Defendant is likely to respond affirmatively to probationary treatment. The willingness of the defendant to cooperate with law-enforcement authorities.

At the time of his arrest, the petitioner was informed by police that Roye had been "conning people all over the state" and that the Porsche which allegedly had been stolen actually never existed. The petitioner agreed to cooperate and he provided information to the prosecutor's office and to the insurance companies. The petitioner is willing to testify against Roye if he is ever apprehended.

The petitioner performed his community service work with Volunteers of America, which the petitioner described as an organization which works with the homeless nationwide and which provides housing for people released from correctional facilities. After the petitioner completed his community service obligation (Exhibit P-4), he expressed his interest in continuing to do volunteer work. As a result, the petitioner was assigned as a tutor in English as a Second Language classes. This work ended when funding for the program ended in February 1989. However, a new program will begin this summer and the petitioner will again do volunteer work for the organization. In letters dated February 10, 1988 and April 17, 1989 (Exhibits P-3 and P-5), Volunteer Coordinator Leonor Diaz describes the petitioner as an excellent asset to the Volunteers of America.

Letters from several individuals who know the petitioner were also admitted into evidence. Special Needs Teacher Joyce E. Barber wrote that she has known the petitioner for ten years and that she has found him to be honest, dependable and of the highest moral character (Exhibit P-1). Ms. Barber noted that the petitioner has found jobs, low income housing programs, and medical services for many of the people in her community. Stanley White of the City of Camden Office of Community Affairs has known the petitioner for about 15 years. He wrote that he has come to recognize the petitioner's sincere responsibility and his integrity (Exhibit P-7). Linda L. Miller, Court Clerk, Superior Court of New Jersey, Mercer County, wrote that she knows the petitioner to be a very likeable and dependable individual. Ms. Miller described the petitioner's character as displaying complete honesty and trustworthiness (Exhibit P-8).

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Among these qualifications is the requirement that an applicant for a casino employee license, or renewal of a casino employee license, must demonstrate that he possesses

the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the act.

The petitioner has candidly admitted the conduct which led to his conviction upon a plea of guilty in June 1987 to the disorderly persons offense of making a false report to law enforcement authorities, contrary to N.J.S.A. 2C:28-4b. The petitioner explained the financial burden he faced which led him to do that which he knew was wrong. The sentencing judge recognized that the character and attitude of the petitioner indicated commission of another offense was unlikely. The judge's observation that the petitioner was likely to respond affirmatively to probationary treatment proved to be correct. Not only has the petitioner satisfactorily completed his 30 hours of community service work, he has continued to perform important and worthwhile voluntary service for the community organization. The petitioner has also worked in the licensed casino industry in Atlantic City without any incident occurring there which would cast doubt on his qualifications for licensure. Several individuals who know the petitioner well were willing to lend their names to the proposition that the petitioner is a man of responsibility and trustworthiness.

Based upon the foregoing findings of fact and the applicable law, I **CONCLUDE** that the petitioner has sustained his burden of establishing by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Robert K. Robins for renewal of a casino employee license permitting him to work in a licensed casino as a dealer be **GRANTED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

OAL DKT. NO. CCC 88: 38

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 2, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

6-2-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 7 [redacted]
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter of Joyce E. Barber, dated April 14, 1989

P-2 Resume

P-3 Letter of Leonor Diaz, dated February 10, 1989

P-4 Volunteer Time Sheet

P-5 Letter of Leonor M. Diaz, dated April 17, 1989

P-6 Letter of Van C. Bryant, dated April 14, 1989

P-7 Letter of Stanley White, dated April 17, 1989

P-8 Letter of Linda L. Miller, dated April 14, 1989

P-9 Dealer Evaluation, dated October 10, 1987

P-10 Dealer Evaluation, dated January 27, 1988

For the respondent:

R-1 Certified Indictment

R-2 Certified Judgment of Conviction and Sentencing Statement

WITNESSES

For the petitioner:

Robert K. Robins

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-162
LICENSE NO. 67330-21
OAL DOCKET NO. CCC 2853-89
ORDER NO. 89-45-17

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

LUZBERTO RODRIGUEZ

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of November 15, 1989,

IT IS on this 27th day of November 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Luzberto Rodriguez is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2853-89

AGENCY DKT. NO. 89-162

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
LUZBERTO RODRIQUEZ,
Respondent.

Brynn Parker, Law Clerk, appearing for petitioner, pursuant to New Jersey Court Rule 1:21-3(c);**R. Lane Stebbins**, Deputy Attorney General (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Luzberto Rodriquez, respondent, pro se

Record Closed: August 21, 1989 **Decided: October 3, 1989**

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission, dated December 6, 1988, seeking revocation of the casino employee license no. 67330-21 issued to respondent Luzberto Rodriquez. The Division alleges that respondent was convicted of the offense of Obtaining Funds by Fraud contrary to 42 U.S.C. 1760 (g), which is analogous to Theft by Deception in the third degree, N.J.S.A. 2C:20-4. Respondent

requested a hearing and on April 19, 1989, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 13, 1989, at which the issues to be resolved by this tribunal were set forth as follows:

ISSUES

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-4, Theft by Deception, which is analogous to 42 U.S.C. 1760(g)?

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

The hearing was held on August 21, 1989 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was closed on that date.

UNCONTESTED FACTS

Based upon respondent's testimony and documents moved into evidence by the Division, the following facts are neither contested nor in dispute. These uncontested facts are, therefore, adopted as **FINDINGS OF FACT** in this matter.

On or about February 16, 1988, respondent Luzberto Rodriquez was indicted by a Federal Grand Jury, together with his mother, Delia Rodriquez and his sister, Maritza Rodriquez and charged with obtaining funds by fraud, contrary to 42 U.S.C. 1760(g); and conspiracy, pursuant to 18 U.S.C. 371, in connection with the Child Care Food Program (Program) (P-1).

Pursuant to the Indictment 88-0081, the Program was enacted by Congress in 1968 to provide nutritious meals to children from low-income families and is administered by the Food and Nutrition Service of the United States Department of

Agriculture (USDA). A day care center that chooses to participate in the Program must enter into a sponsorship agreement with the USDA and the sponsors are entitled to reimbursement by the USDA for legitimate Program related cost incurred in providing food services to children under the sponsors care. In order to obtain reimbursement, a sponsoring institution must submit monthly claim forms to USDA listing the Program-related expenses (P-1).

At all times relevant to the Indictment, respondent's mother, Delia Rodriquez was the administrative director of the Roberto Clemente Day Care Center (RCDCC), a Program sponsor in the Coney Island section of Brooklyn, New York. Delia Rodriquez was responsible for all RCDCC administrative and purchasing activities, including supervision of a federally-funded bank account used for food expenses. The bank account was located at Manufacturers Hanover Trust Co. (Bank), 1124 Surf Avenue in Coney Island. USDA checks payable to RCDCC were deposited in the Bank account. Count One of the Indictment asserts and alleges that between September 1977 and May 1985, approximately, respondent, his mother, his sister and others did conspire and did obtain funds by fraud utilizing a fictitious company for which bogus invoices were prepared reflecting the delivery of food to the RCDCC Child Care Food Program.

The fictitious company was identified as R. Cruz Tropical Fruits & Vegetables (R. Cruz Tropical). Deliz Rodriquez issued checks to "R. Cruz," with word "Tropical" omitted. Respondent Luzberto Rodriquez cashed these checks at the Bank, using an RCDCC employee identification card issued in the name of R. Cruz. Respondent Luzberto Rodriquez used these monies for personal expenditures such as rent, electricity, cable television fees and Screen Actors Guild dues. Subsequent to the R. Cruz checks having cleared the Bank and were returned to RCDCC, the word "Tropical" was inserted after the words "R. Cruz" by Delia Rodriquez. The checks were then attached to matching fraudulent invoices for reimbursement by USDA (P-1).

The Indictment alleges that between September 1977 and May 1985, Deliz Rodriquez issued and signed approximately 274 checks drawn on a bank account funded by USDA. It also alleges that between February 1979 and April 1985, respondent Luzberto Rodriquez cashed checks made out to R. Cruz and prepared bogus food invoices captioned "R. Cruz Tropical Fruits and Vegetables." (P-1).

On May 24, 1988, Delia Rodriquez appeared before the United States District Court for the Eastern District of New York, with counsel, and entered a plea of guilty to Count 39 of the Indictment. As a consequence, Delia Rodriquez was found guilty on the charge and sentenced, as follows:

> [F]ive years; to serve four months. The balance of the sentence is suspended and the defendant is placed on probation for a period of four years and eight months. The defendant is to make restitution in the amount of $100,000.00, for which she and her son, Luzberto Rodriquez are jointly and severally liable, according to a monthly payment schedule determined by the U.S. Probation Department, E.D.N.Y.
> IT IS FURTHER ORDERED that the defendant be assessed the sum of $50.00, pursuant to the special penalty provisions of the Victims of Crime Act of 1984. (T18 USC 3013).
> On motion of AUSA Mehler, all of the remaining counts against this defendant are hereby dismissed.
> Execution of sentence is stayed until June 24, 1988, when the defendant is to report to the F.C.I. designated by the Bureau of Prisons. (P-3).

On the same date, May 24, 1988, respondent Luzberto Rodriquez entered a plea of guilty to Count 95 of the Indictment before the United States District Court for the Eastern District of New York on the charge violating 42 U.S.C. 1760 (g), Embezzlement of "School Lunch Programs" Funds. Respondent Luzberto Rodriquez was sentenced to federal prison for a term of one year and one day and ordered to "make restitution according to a monthly payment schedule determined by the Court and the U.S. Probation Department." All other counts in the indictment were dismissed (P-2). Respondent served eight months, 20 days of the sentence at the Lewisburg Penitentiary, Lewisburg, Pennsylvania, having been released on March 16, 1989.

Respondent is the holder of casino employee license no. 67330-21 and was employed in the casino industry as a blackjack dealer from February 1987 until June 1988 prior to his guilty plea and prison sentence. He is presently 38 years of age.

CONTESTED FACTS

Respondent testified on his own behalf asserting, among other things, that the scheme to defraud the Program originated in 1977 by the then director of RCDCC, Roberto Cotto. In or about 1979, respondent asserted he was approached by his mother, who had become the administrative director of RCDCC, to continue the scheme. He was not employed by RCDCC or the federal Program and had no direct control over the funds. Although respondent plead guilty to one count of the Indictment, he admitted there were 52 different occasions where he fraudulently cashed the R. Cruz checks which totaled an amount of $21,000.

DISCUSSION AND CONCLUSIONS

N.J.S.A. 5:12-86c DISQUALIFYING OFFENSES

Section 86c(1) of the Act mandates that a person who has been convicted of any of the enumerated offenses under Title 2C of the New Jersey Statutes shall be disqualified from holding a casino license. Section 86c(1) of the Act includes N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree). The respondent was found guilty of violating 42 U.S.C. 1760 (g) which states:

> **Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this chapter or the Child Nutrition Act of 1966 [42 U.S.C.A. § 1771 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.**

The Division asserts that a violation of 42 U.S.C. 1760 (g) is analogous to N.J.S.A. 2C:20-4, Theft by Deception, which provides that:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Pursuant to N.J.S.A. 2C:20-2b. Grading of theft offenses, subsection (2) provides that:

> Theft constitutes a crime of the third degree if:
>
> (a) The amount involved exceeds $500.00 but is less than $75,000.00.

The evidence clearly demonstrates that respondent obtained the Program funds by fraud (42 U.S.C.A. 1760 (g) and purposely obtained the funds by deception (N.J.S.A. 2C:20-4) in amounts which exceeded $500.00 (N.J.S.A. 2C:20-2 b. (2)).

Based upon the documentary evidence and respondent Luzberto Rodriquez' testimony, I **FIND** and **CONCLUDE** that the Division has met its burden of proof, by a preponderance of the credible evidence, that respondent committed a violation of N.J.S.A. 2C:20-4 Theft by Deception in the third degree. I **CONCLUDE**, therefore, that respondent is statutorily disqualified from casino licensure pursuant to section 86c (1) of the Act.

N.J.S.A. 5:12-89b(2), GOOD CHARACTER, HONESTY AND INTEGRITY

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act, respondent Rodriquez is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent Rodriquez produced no documentary evidence nor testimony, other than his own, to meet his burden. He contends, among other things, that his involvement in the offense was the only criminal activity he had ever engaged in and that he was induced into the activity by his mother. He further contends that he has served his prison term and that his good behavior and conduct is evidenced by his early release.

Respondent, who is also an actor, was not persuasive nor convincing with his contentions of his good character, honesty and integrity. He admitted that he failed to refuse the offer to become involved in the criminal activity and that he personally

benefited from the illegal conduct. At the time of the commission of the crimes, respondent did not believe he was engaged in any wrongful conduct, notwi hstanding his admission that he could have participated in some alternative form of behavior to earn a living.

I **CONCLUDE**, therefore, that respondent has failed to establish, by clear and convincing evidence, his good character, honesty and integrity for continued casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act.

N.J.S.A. 5:12-90h, REHABILITATION

An applicant or licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

1) The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3) The circumstances under which the offense or conduct occurred;
4) The date of the offense or conduct;
5) The age of the applicant when the offense or conduct was committed;
6) Whether the offense or conduct was an isolated or repeated incident;
7) Any social condition which may have contributed to the offense or conduct;
8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or who have had the applicant under their supervision.

First, respondent presently holds a casino employee license as a blackjack dealer and he wishes to retain the license. As a blackjack dealer, respondent will have substantial contact with casino patrons.

Second, respondent viewed the offenses he committed as serious. However, he hedged in his admission where he said, "But I also put it [the offense] within perspective of other offenses I'm aware of." (Transcript of hearing, August 21, 1989

at 27). Considering the extent of the fraud and damage done to the participants in the Program, the offense is extremely serious.

Third, respondent places the blame for his conduct on his mother who induced him to participate in the fraudulent scheme. He admits that he participated in the scheme and did not resist nor take any action to dissuade his mother from continuing the fraud, or to disengage himself from the criminal acts.

Fourth and fifth, the Indictment asserts that respondent was involved in the illegal activity between the dates of February 1979 and April 1985 when respondent was between the ages of 28 and 34 years. Respondent was no mere youth during the period the fraud was committed.

Sixth, as shown in Five above, the offensive acts were committed on a regular (monthly or semi-monthly) basis over a period of six years by respondent. Notwithstanding his admission of guilt to one count of the indictment (Count 95), respondent also admits to at least 52 occasions where he participated in the fraudulent activity and that the incidents were repeated.

Seventh, respondent contends that his financial need for the funds constitute the social condition which contributed to his conduct to commit the offenses.

Eighth, respondent asserts, without corroboration, that he is now enrolled at the Atlantic County Community College in a program of physical therapy. He contends that this goes to satisfy the vocational schooling component of the rehabilitation factors. He further asserts that he demonstrated good conduct while in prison and has never had a problem in his community.

Having considered all of the factors enumerated in N.J.S.A. 5:12-90h, and having given fair weight thereto, I am not persuaded that respondent has met his statutory burden of establishing rehabilitation. Considering, among other things, the massive amount of fraud perpetuated and the fact that respondent has yet to make restitution of the funds fraudulently taken from the Program, as ordered by the Court in its Judgment and Probation/Commitment Order dated, May 24, 1988, respondent's rehabilitation is incomplete.

I **CONCLUDE**, therefore, that respondent has failed to affirmatively establish his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER

Accordingly, it is **ORDERED** that the casino employee license no. 67330-21 issued to Luzberto Rodriquez be and is hereby **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

3 October 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

10/10/89
DATE

Eleanor Belkot
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 10 1989
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Luzberto Rodriquez

For the Respondent:

Luzberto Rodriquez

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Indictment Cr. No. 88-0081, United States of America v. Delia Rodriquez, Luzberto Rodriquez and Maritza Rodriquez

P-2 Judgment and Probation/Commitment Order Luzberto Rodriquez, 05-24-88

P-3 Judgment and Probation/Commitment Order, Amended, Delia Rodriquez 5-24-88

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-81
LICENSE NO. 19216-21
OAL DOCKET NO. CCC 00244-89
ORDER NO. 89-46-18

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

ORDER

v.

NANCY JEAN ROSENFIELD, a/k/a KAWEJSZA,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by the respondent, and a reply to exceptions having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of November 22, 1989,

IT IS on this 22nd day of December 1989, ORDERED that for the reasons stated on the record, the ALJ's finding that the respondent violated N.J.S.A. 5:12-100(n) and his recommendation to impose therefor a monetary penalty and a license suspension and to require that respondent make restitution of the amount of money acquired in violation of the Casino Control Act be adopted; however, the initial decision is modified to

eliminate any requirement that the respondent pay interest on such monies because the record does not establish that any interest was earned.

IT IS FURTHER ORDERED that respondent Nancy Jean Rosenfield pay a civil penalty in the amount of $300 and make restitution of the $19,304.53 jackpot which she won at Harrah's Marina upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Nancy Jean Rosenfield's casino employee license is suspended for five working days between January 8 and January 14, 1989; and

IT IS FURTHER ORDERED that during this period of suspension Nancy Jean Rosenfield shall not be eligible to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that the restitution payments received from the respondent be made available to the general public by placement upon a progressive slot machine meter according to such terms and conditions as the Commission may hereafter direct; and

IT IS FURTHER ORDERED that the respondent's motion for stay is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly /mm

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 244-89
AGENCY DKT. NO. 89-81

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
NANCY JEAN ROSENFIELD, A/K/A KAWEJSZA,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Guy S. Michael, Esq., for respondent (Brown & Michael, attorneys)

Record Closed: May 30, 1989 Decided: October 10, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on September 27, 1988. The complaint charges the respondent with having wagered at Harrah's Marina Hotel Casino on July 16, 1985, while she was a licensed casino employee at Atlantis Hotel Casino, in violation of Section 100n of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*) These are the issues:

1. Has the respondent violated the provisions of *N.J.S.A.* 5:12-100n?

2. If so, what is the appropriate penalty?

PROCEDURAL HISTORY

As noted, the Division's complaint was filed with the Commission on September 27, 1989. The respondent's request for a hearing on the complaint was received by the Commission on November 15, 1988, and the respondent's answer was filed on January 3, 1989. On January 12, 1989, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

A telephone prehearing conference was conducted by Administrative Law Juge Stephen W. Thompson on March 17, 1989. At that time, the matter was scheduled to be heard by the undersigned on April 28, 1989. On April 12, 1989, respondent filed a motion seeking limitation on the potential sanctions which could be imposed for a violation of Section 100n of the Casino Control Act. The Division's letter brief in opposition to the motion was filed on April 27, 1989. The next day, at the commencement of the scheduled hearing, oral argument was heard on the respondent's motion and it was denied.

The hearing was held as scheduled. I thereafter determined that it was necessary to review the transcript in this matter and the record closed when the transcript was received on May 30, 1989. Issuance of this Initial Decision was delayed as a result of illness.

FINDINGS OF FACT

The material facts in this matter are undisputed. The respondent was issued casino employee license number 19216-21 in February 1981. She subsequently was issued a casino key employee license which permits her employment as a pit boss. At the present time, the respondent is employed by the Show Boat Hotel and Casino as a casino scheduler.

On July 16, 1985, the respondent was employed by the Atlantis Casino as a craps floor person. She testified that she had dined at Joe's Place and had received $10 coupons redeemable at Harrah's Marina Casino. She took the redemption coupon to the casino and unexpectedly was given tokens rather than money. The respondent testified that there was a long line of people waiting to convert tokens into money. So, rather than waiting in line, the respondent decided to get rid of the tokens in the slot machines.

The respondent tried to get rid of her tokens in slot machines which had a meter showing a progressive jackpot. To her great surprise, rather than getting rid of $10 worth of tokens, the respondent won a progressive jackpot of $19,304.53 (Exhibits P-2 and P-3 through P-3D).

The respondent testified candidly that she was aware of the prohibition against casino employees gambling and her immediate concern was that she would lose her job. Nevertheless, she identified herself to the Harrah's Casino personnel and gave them her correct social security number. No one asked her if she was a casino employee and she did not volunteer that information.

In January 1987, the respondent applied for a casino key employee license. She realized that this application would include submission of her tax returns. When she had filed her 1985 tax return (Exhibit P-1), she included declaration of her gambling winnings in the amount of $19,305. This return also indicated gambling losses at Lake Taho in the amount of $2,500.

Division of Gaming Enforcement agent Theodore Oszczakiewicz testified that he conducted an investigation of the respondent in regard to her casino key employee application. The respondent's listing of gambling winnings and losses on her 1985 Federal Income Tax Return prompted him to make a further investigation. He testified that he asked the respondent about these matters during a personal interview. She told him that she knew this would present a problem concerning her license application. The respondent described to him the circumstances of her winning the progressive slot machine jackpot at Harrah's on July 16, 1985. According to Agency Oszczakiewicz, the respondent was pleasant and candid with him. He stated that there were no problems other than the Section 100n violation in regard to her casino key employee application, and the license was subsequently granted.

The respondent testified credibly that she had never previously gambled in Atlantic City while a licensed casino employee. She acknowledged that she accepted the jackpot payoff in cash on July 16, 1985. According to the respondent, she gave $5,000 of her winnings to her sister. Some of the money was used to pay for her father's operation and the rest of the winnings were spent when the respondent purchased a new home.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Section 100n of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*) provides that it shall be unlawful for any casino key employee, other than a junket representative, or any casino employee, other than a bartender, waiter, waitress, or other casino employee who in the judgment of the Commission is not directly involved with the conduct of gaming operations, to wager at any game at any casino in this state. It is undisputed in this matter that the respondent was the holder of a casino employee license and was employed as a floor person by the Atlantis Hotel Casino on July 16, 1985. On that date, the respondent gambled at a progressive slot machine at Harrah's Marina Casino. She won a jackpot of $19,304.53.

The Division has proven this conduct and the conduct is candidly admitted by the respondent. Based upon the Findings of Fact in this matter and the applicable law, I **CONCLUDE** that the Division has established by a preponderance of the credible evidence that the respondent has committed a violation of *N.J.S.A.* 5:12-100n.

Section 129 of the Casino Control Act authorizes the Commission to impose a broad range of sanctions upon licensees who have violated any provisions of the Act or regulations, or who have committed any misconduct. Among the sanctions which are authorized are revocation or suspension of the license and civil penalties as may be necessary to punish misconduct and to deter future violations, not to exceed $10,000 in the case of any individual licensee. In addition, the Commission may enter cease and desist orders, issue letters of reprimand or censure, and order restitution of any monies or property unlawfully obtained or retained by the licensee or registrant. Any or all of the available sanctions may be imposed in combination with each other.

Section 130 of the Act sets forth standards which the Commission shall consider in determining the appropriate sanctions to be applied in a particular case. These standards are as follows:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of the licensee or the registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee or registrant;

d. The prior history of the particular licensee or registrant involved with respect to gaming activities;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring;

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this Act. Such factors shall only go to the degree of the penalty to be imposed by the Commission, and not to a finding of a violation itself.

The Commission has expressed its concern with the problem of casino gambling by gaming employees (*See*, Exhibit P-6, *Commission Guidelines for Section 100n Violation Sanctions)*. By its guidelines for the imposition of sanctions, the Commission sought to deter future violations of Section 100n both by the specific licensee and by the entire population of casino licensees. The guidelines combine the sanctions of monetary penalties and suspensions of license credentials for both first and second offenses. A third offense subjects the licensee to complete revocation of his credentials.

The Commission has expressed its willingness to impose other available sanctions as the special circumstances of a given case might require. *In the Matter of*

the Division of Gaming Enforcement v. Marlene L. Westhoff, OAL Dkt. CCC 625-88, Agency Dkt. No. 87-386 (Exhibits P-4 and P-5), the Commission determined that Westhoff, a licensed casino employee, should be required to make restitution of a large progressive slot machine jackpot which she had won while gambling in violation of Section 100n of the Act. The Commission noted that the money reflected by the meter on a progressive jackpot is money held in trust for the gaming public. Westhoff was not among those members of the public for whom such money was rightly held and the Commission was protecting the interest of the public in the money itself and in the fairness of the regulatory process by requiring restitution. If the money is returned to the progressive slot machine, it will ultimately go to a member of the public who is gambling lawfully.

The Commission also noted that gambling by casino employees could pose a significant threat to casino operations and also would adversely affect the public's confidence in the integrity of the regulatory process. After describing all of these factors, Commissioner Armstrong suggested that restitution should be ordered in Section 100n case where the amount of the violator's winnings can reasonably be ascertained. Commissioner Armstrong's motion that the Commission order Westhoff to pay a $300 fine and make restitution of the jackpot which she won, as well as any interests or benefit earned on the money, was carried by the Commission unanimously (Exhibit P-5).

In light of the undisputed findings in this matter and the foregoing discussion, it is clear that the appropriate sanction for the respondent's violation of Section 100n of the Casino Control Act is restitution of the jackpot which she won in the amount of $19,304.53. Utilizing the Commission's previously-announced guidelines for a first violation of Section 100n, it also appears that it would be appropriate to suspend the respondent's casino employee license for a period of five days and to require her payment of a civil voluntary penalty in the amount of $300, pursuant to Sections 129 and 130 of the Act. I so **CONCLUDE**. I further **CONCLUDE** that when restitution is accomplished, the money should be returned to Harrah's Marina Hotel and Casino, which would then be required to make the total amount of money available to the general gaming public through placement of the amount on its progressive slot machine meter.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of respondent Nancy Jean Rosenfield, be suspended for a period of five days, and it is further **ORDERED** that Nancy Jean Rosenfield pay a civil monetary penalty in the amount of $300. Finally, it is **ORDERED** that Nancy Jean Rosenfield make restitution of $19,304.53, together with interest, payable pursuant to a reasonable schedule to be established by the Casino Control Commission, and when this restitution is complete, the amount of money shall be placed on the progressive slot machine meter at Harrah's Casino Hotel so that it available to be won by the general gaming public.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 10, 1989
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

10-10-89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 13 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

lh

INVENTORY OF EXHIBITS

For the petitioner:

P-1 1985 Tax Return
P-2 Verification of Win
P-3 Letter, dated April 12, 1989
P-3A Harrah's Progressive Jackpot Album
P-3B Request to Reset Slot Machine Meter
P-3C 1985 Federal Income Tax Report of Gambling Winnings
P-3D Photo of Nancy Jean Rosenfield, Jackpot Winner
P-4 Initial Decision, OAL Dkt. No. CCC 675-88, *Division of Gaming Enforcement v. Marlene L. Westhoff*
P-5 Casino Control Commission transcript, dated November 2, 1988, pages 44-51
P-6 Casino Control Commission transcript of Section 100n Violation Guidelines, dated March 21, 1984

For the respondent:

None

WITNESSES

For the petitioner:

Theodore Oszcakiewicz

For the respondent:

Nancy Jean Rosenfield

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-81
APP. DIV. DOCKET NO. _____

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

NANCY JEAN ROSENFIELD
a/k/a KAWEJSZA,

Respondent.

DECISION

Appearances:

R. Lane Stebbins, Deputy Attorney General
for the Division of Gaming Enforcement

Guy S. Michael, Esq. for Nancy Jean Rosenfield

INTRODUCTION

This matter arises out of a complaint filed by the Division of Gaming Enforcement alleging that while she was a licensed casino employee, Nancy Jean Rosenfield gambled at Harrah's Marina Hotel and Casino in violation of N.J.S.A. 5:12-100(n). At the hearing in the Office of Administrative Law (OAL) this conduct was candidly admitted to by the respondent who also acknowledged that while she was playing a progressive slot machine on July 16, 1985, she won a $19,304.53 jackpot. As a result, the only contested issue to be decided by the administrative law judge (ALJ) was the sanction to be imposed for this conduct. In an initial decision filed on or about October 13, 1989, the ALJ

recommended that the respondent's casino employee license be suspended for a period of five days, that she be required to pay a civil penalty of $300, and that she be required to make restitution of the jackpot which she had won, together with interest. The ALJ further recommended that the $19,304.53, once collected, be placed on the progressive slot machine meter at Harrah's Marina where it would be available to be won by the general gaming public.

After considering the entire record in this matter at our public meeting of November 22, 1989, the Commission determined to adopt the initial decision with one minor modification. In our order dated December 22, 1989, we adopted all of the ALJ's recommendations except the requirement that the respondent pay interest on the jackpot monies because the record did not establish that any interest was earned.

On or about January 5, 1990, the respondent appealed the Commission's decision to the New Jersey Superior Court, Appellate Division. However, the only aspect of the Commission's order challenged by the respondent is the appropriateness of the Commission's decision to order her to return the jackpot. Therefore, this opinion, issued pursuant to R. 2:5-1(b), will only deal with that aspect of this case.

DISCUSSION

This is the Commission's second case involving a casino employee who hit a jackpot while playing a slot machine in violation of section 100(n). In its first case State v. Marlene Westhoff, Docket No. 87-386 (decided November 2, 1988), the

Commission rejected a proposed stipulation of settlement which called for a monetary civil penalty and a five-day suspension of Ms. Westoff's casino employee license, and transmitted the case to the OAL for consideration of whether Ms. Westhoff should be required to return jackpot winnings in the amount of $27,069.10. The ALJ concluded that, although restitution would be an appropriate remedy for 100(n) violations, it would not be applied in Ms. Westhoff's case because the Commission had never before imposed this sanction and had not included restitution as a sanction in the guidelines for penalties in 100(n) cases pronounced at the Commission's public meeting of March 21, 1984.[1] The Commission disagreed and ordered Ms. Westhoff to repay the entire amount of her winnings.

The ALJ in this case followed the Commission's decision in Westhoff and concluded that an appropriate sanction for Ms.

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1. The 1984 guidelines represent a second revision of the Commission's policy for sanctioning violations of section 100(n). The initial guidelines, announced on January 12, 1982, related only to first offenders and called solely for monetary penalties, the amount of which were dependent upon the employee's position. On March 16, 1983, the Commission adopted new guidelines which called for a range of monetary penalties ($100 to $500), suspension in appropriate cases or both. According to the guidelines adopted March 21, 1984, the appropriate penalties are: for a first violation, suspension of the violator's license credential for a period of 1 to 14 days and a monetary penalty from $100 to $1,000 (depending on the license held and the annual salary); for a second violation, a suspension ranging from 15 to 60 days and/or a monetary penalty between $500 and $2,000 for all categories of employees; for a third violation, revocation in all cases and for all categories. Our guidelines have called for progressively more severe sanctions because the number of violations continued unabated and even increased over the years.

Rosenfield's violation of section 100(n) of the Casino Control Act included restitution of the jackpot which she won.

At the OAL hearing and in arguments before the Commission, counsel for Ms. Rosenfield again raised the argument, rejected in Westhoff, that imposing the sanction of restitution would be unfair because restitution was not included in the guidelines for sanctions in 100(n) cases adopted by the Commission in 1984. Counsel argued that Ms. Rosenfield was entitled to rely both on these guidelines and on the Commission's failure, at the time of her conduct, to impose the sanction of restitution in any prior 100(n) case. Counsel further argued that, because the Commission has not adopted rules or regulations which clarify how and when this sanction will be applied, she lacked fair notice that restitution would be required. Lastly, assuming arguendo that restitution could be imposed by the Commission on a case specific basis, counsel asserted that restitution would still be unfair in this case because Ms. Rosenfield's behavior is not the kind of "absolutely outrageous" conduct which would warrant the imposition of a sanction rivaling or surpassing any fine which has ever been imposed against a casino employee since the inception of casino gaming.

The legal term for the notion that Ms. Rosenfield should be entitled to rely on the Commission's failure to order restitution in past 100(n) cases is equitable estoppel, the vital principle of which is that, "one may be precluded by his voluntary conduct from taking a course of action which would work injustice or wrong to the party relying with good reason and in good faith on

such conduct." W.V. Pangborne and Co. v. N.J. DOT, 226 N.J. Super. 367, 372 (App. Div. 1988). However, there is general reluctance to apply estoppel against public agencies except where the interests of justice, morality and common fairness clearly dictate that course. Anske v. Borough of Palisades Park, 139 N.J. Super. 342, 348 (App. Div. 1976); see also Summer Cottagers' Assn. of Cape May v. City of Cape May, 19 N.J. 493, 503 (1955). We do not believe that any of those considerations are present here. Moreover, if we look more closely it becomes obvious the interests of justice weigh decidedly against Ms. Rosenfield.

Accepting the argument that restitution would be unfair in this case suggests that Ms. Rosenfield has some legitimate claim, superior to all others, to the progressive jackpot resulting from her pull of the handle. But this is not the case. The salient point is this: Ms. Rosenfield was violating the law when she hit the jackpot. Casino gaming was an unlawful venture for the public at large in this State until the Constitution was amended to permit it, but only upon such terms and conditions, N.J.S.A. 5:12-100(n) among them, as would be permitted by statute. Ms. Rosenfield, so long as she was in a position subject to section 100(n), was not among those members of the public for whom casino gambling is a lawful endeavor.

Balanced against the interests of Ms. Rosenfield in this case are several important public policy issues. First, the money reflected by the meter on a progressive jackpot is money held in trust for the gaming public. Such money will go,

ultimately, to that member of the public who luckily and lawfully pulls the handle and hits the right combination of symbols. See e.g. United States v. Hughes Properties, 476 U.S. 593, 106 S. Ct. 2092 (1986); In the Matter of Greate Bay Hotel and Casino, Inc. v. Lipman Cohen, et al., Regarding the Issuance of a Ruling Interpreting N.J.A.C. 19:45-1.37 (Commission order July 1, 1985). As has already been established, Ms. Rosenfield was not a member of the public for whom such money was rightly held.

Second, the risk to the public created by Ms. Rosenfield's conduct is considerable. Casino employees were prohibited from gambling by section 100(n) because the Legislature was aware that gambling by such individuals could pose a significant threat to casino operations and to the public's perception of fairness. In support of an absolute bar on casino gambling by gaming employees, the drafters of the Second Interim Report, Staff Policy Group on Casino Gambling (February 17, 1977) indicated that, "The opportunities for collusion among a highly mobile group of employees with skill and inside knowledge of casino operations is too great to tolerate." Id. at 46. However, the effectiveness of section 100(n) as a deterrent will be significantly diminished if casino employees know that, if they are caught gambling in violation of section 100(n), the penalty imposed will not include their unlawful winnings. In addition, such misconduct must be punished appropriately if the public is to maintain its trust in the integrity of the regulatory process. State v. Playboy-Elsinore Associates, et al., 10 N.J.A.R. 465 (1982).

Ms. Rosenfield's argument that she had no notice that restitution could be imposed for 100(n) violations is unavailing. The Commission did not impose the sanction of restitution in prior 100(n) cases, except Westhoff, because in no other case was the Commission presented with evidence of the violator's unlawful winnings. However, notice that restitution could be imposed as a sanction for violations of the Casino Control Act was provided to Ms. Rosenfield as it was to all the world by the promulgation of N.J.S.A. 5:12-129(6) which provides in pertinent part:

> In addition to any penalty, fine...authorized by law, the Commission shall...have the authority to
>
> ...
>
> (6) Order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant.

In addition, when the Commission pronounced its section 100(n) penalty guidelines in 1984, Commissioner Don M. Thomas observed that, "...this Commission should retain the right to use any sanction authorized by [section] 129 if the circumstances warrant it." Chair Walter N. Read expressed approval of this concept and specifically indicated that the Commission would continue to be guided in its decisions by the particular facts of each case. Chair Read stated:

> But they are guidelines, they are not a straight jacket. If there are particular appealing reasons we should not be this strict, I can conceive of our reacting to them to some extent.
>
> If somebody's conduct is absolutely outrageous, despite the fact that it's a first offense, I can conceive of us being more difficult then these

> guidelines indicate. (Transcript of March 21, 1984, at page 171, lines 13 to 22).

Ms. Rosenfield's argument that any variation from the 1984 guidelines must be based on "absolutely outrageous" conduct is also based on these remarks. However, we do not believe that a fair reading supports Ms. Rosenfield's position. It must be understood that Chair Read was responding to Commissioner Thomas's reminder that even if the Commission adopted the proposed guidelines, it retained the right to use any sanction authorized by 129 if the circumstances warranted it. Chair Read agreed that this was a point well-taken and indicated that there might be instances in which the Commission would be less strict than the guidelines as well as instances in which it might be more strict. His remarks about "outrageous conduct" were obviously not intended to set forth the only situation under which the Commission would deviate from the proposed guidelines, but rather give but <u>one</u> reason for doing so. It is clear from the context of his remarks that Chair Read was referring to the Commission's authority to impose higher monetary penalties or longer periods of license suspension, which, in addition to revocation for third violations were the only sanctions discussed in the guidelines.

In our view, this case presents precisely the circumstances section 129(b) was designed to address. Ms. Rosenfield concedes that she obtained the jackpot unlawfully. An order of restitution is necessary to preclude her from profiting by her unlawful conduct and to return the monies to the status they had

before her unlawful act, viz., held in trust for the gaming public. Moreover, as previously noted, the use of this sanction is required if section 100(n) is to have its intended deterrent effect upon all persons subject to its strictures. Therefore, we do not hesitate to impose this legislatively authorized supplemental sanction in this or any case where the amount of gambling "winnings" are established in the record presented to us.

CONCLUSION

In recognition of all these factors we believe that Ms. Rosenfield should be required to make restitution of her unlawful winnings and that this supplemental sanction should be imposed in addition to the $300 civil penalty and five-day suspension recommended by the ALJ. Therefore we adopt the initial decision, subject only to the modification eliminating any requirement that the restitution order include any amount for interest on the monies unlawfully won by Ms. Rosenfield.

NEW JERSEY CASINO CONTROL COMMISSION

VALERIE H. ARMSTRONG, ACTING CHAIR

E. KENNETH BURDGE

W. DAVID WATERS

FRANK J. DODD

WALTER N. READ
(Former Chairman Walter N. Read who resigned on January, 8, 1990, voted in accordance with this opinion.)

Dated: January 22, 1990

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-149
REGISTRATION NO. 74223-40
OAL DOCKET NO. CCC 113-89
ORDER NO. 89-35-13

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

SHAWN L. SAXON,
T/A SHAWN PHILLIPS
AND SHAWN SMITH,

Respondent.

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 30, 1989,

IT IS on this 11th day of September 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Shawn L. Saxon is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 113-89

AGENCY DKT. NO. 89-149

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,

v.

SHAWN L. SAXON a/k/a
SHAWN PHILLIPS AND
SHAWN SMITH,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Shawn L. Saxon, respondent, pro se

Record Closed: July 10, 1989 Decided: July 18, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Shawn L. Saxon's casino hotel employee registration no. 74223-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's

registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a linen room attendant at the Claridge Hotel and Casino. By complaint to the Commission, filed December 6, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of two separate offenses of theft by unlawful taking from a person (third degree), in violation of N.J.S.A. 2C:20-3, which are disqualifying offenses under section 86c(1). The Division further objected that, based upon one of the above convictions, the continued registration of the respondent would be inimical to the policies of the Casino Control Act pursuant to N.J.S.a. 5:12-86c(2). Based upon the complaint, the Commission notified the respondent on December 12, 1988, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated December 22, 1988, which was received by the Commission on December 24, 1988, the respondent requested a hearing. On January 4, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 9, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Lillard E. Law on March 20, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-3 theft in the third degree, pursuant to Atlantic County Indictment Nos. 1071-7-84-A and No. 1339-9-84-A.

B. Whether respondent has been convicted of theft (N.J.S.A. 2C:20-3) as charged in Atlantic County Indictment No. 1071-7-84-A and is thereby disqualified pursuant to section 86c(2).

C. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was held on July 10, 1989, in the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record was closed.

Pursuant to N.J.A.C. 1:1-6.1 and N.J.A.C. 1:1-14.6, and based upon the Deputy Attorney General's representation that the sole basis of the alleged section 86c(2) disqualification was a conviction identical to and one-in-the same as one of the alleged section 86c(1) statutory disqualifiers, I dismissed the inimicality issue. Pursuant to section 86, an applicant is disqualified based upon certain criteria. Subsection c provides that persons convicted of certain offenses are disqualified from licensure or registration. Paragraph (1) lists certains statutory disqualifiers. Paragraph (2) makes the conviction of "any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act . . . " a disqualifier (emphasis added). Based upon this language, if the conviction is for a statutory disqualifier listed in section 86c(1), that section takes precedence over section 86c(2). By definition, the conduct is not "any other offense" and therefore an action may not be maintained as an inimical offense if the conduct is a listed statutory disqualifier under section 86c(1).

FACTUAL DISCUSSION

On July 13, 1984, the respondent and an accomplice, Ricardo Bailey, planned to pickpocket individuals in Atlantic City. The two went to the entrance of the Ceasar's Boardwalk Regency Hotel and Casino. As a casino patron, William Csaszar, entered the casino through a revolving door, the respondent stepped in front of him and bumped him, thus enabling Mr. Bailey to pick Mr. Csaszar's pocket and remove his wallet.

On July 26, 1984, Mr. Saxon was indicted under the name of Shawn Phillips in the Superior Court, Atlantic County Indictment No. 1071-7-84-A, and he was charged with one count of theft by unlawful taking from the person in violation of N.J.S.A. 2C:20-3 (P-2). On September 17, 1984, the respondent entered a plea of not guilty to the indictment. On October 22, 1984, the respondent retracted his plea of not guilty and entered a plea of guilty to the charge. On March 7, 1985, the respondent was convicted of the charge and was sentenced to serve a term of five years, was given credit for 23 days previously served, and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty (P-3).

On September 2, 1984, the respondent and an accomplice, Kevin Brown, planned to pickpocket individuals in Atlantic City. The two went to an ice cream stand in the City. The respondent removed a money clip from the pocket of Rubie Melon, a patron who was standing in line, and handed the money clip to Kevin Brown.

On September 25, 1984, Mr. Saxon was indicted in the Superior Court, Atlantic County Indictment No. 1339-9-84-A, and he was charged with one count of conspiracy to commit the crime of theft by unlawful taking from the person in violation of N.J.S.A. 2C:5-2 and one count of theft by unlawful taking from the person in violation of N.J.S.A. 2C:20-3 (P-4). On September 25, 1984, the respondent entered a plea of not guilty to the indictment. On October 22, 1984, the respondent retracted his plea of not guilty and entered a plea of guilty to count two of the indictment (theft by unlawful taking from the person). On March 7, 1985, the respondent was convicted of the charge and was sentenced to serve a term of five years concurrent with the sentence imposed on Indictment No. 1071-7-84-A, was given credit for one day previously served, and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty. The conspiracy count was dismissed (P-5).

In listing his reasons for imposing a custodial sentence, the sentencing judge listed no mitigating factors but did list three aggravating factors. The judge noted: (1) the risk that the defendant will commit another crime; (2) the extent of the defendant's prior criminal record and the seriousness of the offense of which he has been convicted; and (3) the need for deterring the defendant and others from violating the law. The judge then wrote "the defendant's prior adult and juvenile record, together with the serious nature of this offense, clearly dictate that the defendant receive a State prison sentence to deter this defendant from future antisocial conduct. The need to deter is of paramount importance" (P-3 and P-5).

The respondent is now 23 years old. At the time of the offense he was 18 years old. He was raised in Atlantic City by his mother and his step-father. His step-father is an Atlantic City fireman and his mother holds two jobs. He was raised by a good family, but he lived in a bad neighborhood. He graduated from the Atlantic City High School in 1984. He was a member of the basketball team and regularly attended church. The respondent is engaged to be married on August 26, 1989. He supports his fiancee and two children, ages five and one. In addition, his fiancee is expecting his third child.

The respondent has an extensive juvenile record. He has approximately nineteen shoplifting arrests and one arrest for aggravated assault. He was placed on probation, which was extended three times for subsequent misconduct. He also performed community service. The respondent's Personal History Disclosure Form - 4A (P-1) indicates in answer to question nine on page eight that the respondent has never been arrested. The respondent testified that he specifically did not answer question nine and does not know who checked the "no" block. The respondent indicated that he glanced at question nine, did not fully read it, knew that he had been convicted but specifically did not answer it as he wanted to start his life fresh. He did not want anyone to know he had been in jail as he felt no one would hire him if they knew he had been in jail.[1]

The respondent was incarcerated on March 7, 1985. He served his sentence in the Bordentown Youth Correctional Facility. He was released on December 2, 1986, and was placed on parole. The respondent was released from parole supervision early for good behavior on July 11, 1988. While incarcerated, the respondent participated in and successfully completed several counseling programs. Since his release, he has participated in the Police Athletic League youth baseball program and participates in a local basketball program.

On April 27, 1987, the respondent became employed in the casino industry. He became employed as a linen room attendant at the Claridge Hotel and Casino. After nearly one year, he resigned this position in order to apply for a new position in a different department. He did not have enough time with the company to have transfer rights. After submitting his resignation, he was involved in a traffic accident, and he did not return to the Claridge. From July 1988 through November 1988, the respondent was employed as a parking attendant at Trop World. The respondent is no longer employed in the casino industry. The respondent currently works for S.W. Kooperman, Inc., a painting contractor in Atlantic City. The respondent is also a member of Local 68 of the Operating Engineers. He plans to go to school to learn refrigerator and air conditioner maintenance, and he would like to be employed as a groundskeeper in the casino industry repairing refrigeration and air conditioning systems.

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1 The Deputy Attorney General representing the Division represented that he was not seeking to amend the Division's complaint to include a section 86b disqualifier for failure to disclose material information but merely introduced this information as rebuttal to the respondent's representation of rehabilitation.

The respondent submitted one letter of recommendation in his behalf. Joseph C. Fenton, Jr., vice president of S. W. Kooperman, Inc., in a letter dated July 6, 1989, wrote:

> Please be advised that the above referenced individual has been in our employment since February 9, 1989. He has proven to be a more than satisfactory employee with respect for his fellow workers, supervisors and customers associated with our company. Shawn has the potential to be a valued employee for many years. [R-1]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

I am persuaded that respondent's misconduct was, in part, due to immaturity. At the time the respondent committed the offenses he was only 18 years of age. While he knew right from wrong, he had been raised in a poor neighborhood and had become a follower. Everyone else did it, so he did it. Incarceration has helped mature the respondent. He looks at life differently now. He is more mature and has become a family man who accepts responsibility. He no longer associates with the same people and does not think of attempting criminal activity. He feels sorry about his prior misconduct and is remorseful.

FINDINGS OF FACT

1. On July 13, 1984, the respondent and an accomplice, Ricardo Bailey, planned to pickpocket individuals in Atlantic City. The two went to the entrance of the Ceasar's Boardwalk Regency Hotel and Casino. As a casino patron, William Csaszar, entered the casino through a revolving

door, the respondent steped in front of him and bumped him, thus enabling Mr. Bailey to pick Mr. Csaszar's pocket and remove his wallet.

2. On July 26, 1984, Mr. Saxon was indicted under the name of Shawn Phillips in the Superior Court, Atlantic County Indictment No. 1071-7-84-A and was charged with one count of theft by unlawful taking from the person in violation of N.J.S.A. 2C:20-3. On March 7, 1985, the respondent was convicted of the charge and was sentenced to serve a term of five years, was given credit for 23 days previously served, and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty.

3. On September 2, 1984, the respondent and an accomplice, Kevin Brown, planned to pickpocket individuals in Atlantic City. The two went to an ice cream stand in the City. The respondent removed a money clip from the pocket of Rubie Melon, a patron who was standing in line, and handed the money clip to Kevin Brown.

4. On March 7, 1985, the respondent was convicted of theft by unlawful taking from the person in violation of N.J.S.A. 2C:20-3 and was sentenced to serve a term of five years concurrent with the sentence imposed on Indictment No. 1071-7-84-A, was given credit for one day previously served, and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty.

5. The respondent is now 23 years old. At the time of the offense he was 18 years old.

6. The respondent was raised in Atlantic City by his mother and his step-father. His step-father is an Atlantic City fireman and his mother holds two jobs. He was raised by a good family, but he lived in a bad neighborhood.

7. He graduated from the Atlantic City High School in 1984. He was a member of the basketball team and regularly attended church.

8. The respondent is engaged to be married on August 26, 1989. He supports his fiancee and two children, ages five and one. In addition, his fiancee is expecting his third child.

9. The respondent has an extensive juvenile record. He has approximately 19 shoplifting arrests and one arrest for aggravated assault. He was placed on probation, which was extended three times for subsequent misconduct. He also performed community service.

10. The respondent was incarcerated on March 7, 1985. He served his sentence in the Bordentown Youth Correctional Facility. He was released on December 2, 1986, and was placed on parole. The respondent was released from parole supervision early for good behavior on July 11, 1988.

11. While incarcerated, the respondent participated in and successfully completed several counseling programs. Since his release, he has participated in the Police Athletic League youth baseball program and participates in a local basketball program.

12. On April 27, 1987, the respondent became employed in the casino industry. He became employed as a linen room attendant at the Claridge Hotel and Casino. After nearly one year, he resigned this position in order to apply for a new position in a different department. He did not have enough time with the company to have transfer rights. After submitting his resignation, he was involved in a traffic accident, and he did not return to the Claridge.

13. From July 1988 through November 1988, the respondent was employed as a parking attendant at Trop World.

14. The respondent is no longer employed in the casino industry. The respondent currently works for S.W. Kooperman, Inc., a painting contractor in Atlantic City.

15. The respondent is a member of Local 68 of the Operating Engineers. He plans to go to school to learn refrigerator and air conditioner maintenance, and he would like to be employed as a groundskeeper in the casino industry repairing refrigeration and air conditioning systems.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> 1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L.1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> . . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

> a. No person may commence employment as a casino hotel employee unless he has been registered with the

commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the registrant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends, that the respondent was convicted of two violations of N.J.S.A. 2C:20-3, theft by unlawful taking from the person, which constitutes violations of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's participation in the theft of money from William Csaszar and Rubie Melon on separate occassions and his convictions in Superior Court for those thefts constitutes violations of N.J.S.A. 2C:20-3, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-3, theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

N.J.S.A. 2C:20-2, Consolidation of theft offenses; grading; provisions applicable to theft generally, provides in pertinent part:

> b. Grading of theft offenses.
>
> . . . .
>
> (2) Theft constitutes a crime of the third degree if:
>
> . . . .
>
> (d) It is from the person of the victim;

The Division established, and the respondent admitted during his testimony, that he knowingly participated in the theft of money from the persons of William Csaszar and Rubie Melon on separate occasions and that he was convicted in Superior Court for those offenses. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes violations of N.J.S.A. 2C:20-3 and that the respondent was convicted of two violations of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(d), the offenses constitute crimes of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offenses committed by the respondent are disqualifying offenses under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling

> or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In regard to the first criterion, Shawn L. Saxon is a casino hotel registrant and was employed as a linen room attendant and as a parking attendant, and he desires to be employed as a refrigeration and air conditioning systems maintenance man. As such, he does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent committed two violations of N.J.S.A. 2C:20-3, theft by unlawful taking from the person, over a two-month period prior to his employment in the casino industry. Because the offense is designated as a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. On two separate occasions, the respondent planned in advance with two different accomplices to steal from individuals in Atlantic City. On one occassion the theft occurred in a casino hotel facility. Such conduct is extremely serious and cannot be tolerated.

Fourth, the respondent's misconduct occurred during a two-month period in 1984, when it ceased.

Fifth, the respondent was 18 years old at the time of the first offense. I believe immaturity was a factor in this case. He grew up in a poor neighborhood and became a follower.

Sixth, the respondent's misconduct was not isolated in nature. He has an extensive juvenile record consisting of approximately nineteen shoplifting offenses and one aggravated assault arrest. He has not committed any other violations of the criminal laws since his release from prison.

Seventh, the respondent was raised in a poor section of Atlantic City and he associated with teenagers who were predisposed to criminal activity. He became a

follower, and engaged in such antisocial behavior in order to gain acceptance in his community.

Eighth, the respondent has made substantial rehabilitative efforts. He exhibited good conduct in prison and successfully participated in several counseling programs. He was released early from parole supervision because of his good behavior. He has participated in local youth baseball and basketball programs. He is about to marry, and he has accepted responsibility in supporting his family. Since being released from prison, he has worked for the first time in his life. He has developed a work ethic and has learned the value of working. He has accepted responsibility for his misconduct and has expressed remorse. He has become a member of Local 68 of the Operating Engineers, and he is seeking to go to school in order to learn refrigeration and air conditioning systems maintenance.

The Commission has addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting 87-30 of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[2] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation. . .

In this case, the respondent was a linen room attendant and desires to be a refrigeration and air conditioning system maintenance man. He had no responsibility for any casino gaming activity, but did have limited contact with casino patrons. Considering the nature of the position he held, the respondent's work record in the industry, his demeanor and candor at the hearing, the fact that he stole from other individuals, the fact that he stole the money in a casino hotel facility, the length of his juvenile record, his involvement in the community, his age at the time of the offense and his subsequent

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2 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

maturity and acceptance of responsibility, the fact that he has been off parole supervision for only one year, and his family status, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **SUSTAINED** and that registration no. 74223-40 be revoked.[3]

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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3 I recognize that the respondent has made substantial rehabilitative efforts in the last year. If these efforts continue and the respondent can subsequently establish his rehabilitation, I note for the respondent that while the normal reapplication perfor is five years from denial, N.J.A.C. 19:41-8.7 permits a denied applicant to apply to the Commission for earlier consideration if he can establish that he can then meet the requirements of section 90 of the Act.

OAL DKT. NO. CCC 113-89

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 18, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE JUL 21 1989

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Personal History Disclosure Form 4A, dated April 27, 1987

P-2 Superior Court of New Jersey, Atlantic County Indictment No. 1071-7-84-A

P-3 Superior Court of New Jersey, Atlantic County Judgement of Conviction on Indictment No. 1071-7-84-A

P-4 Superior Court of New Jersey, Atlantic County Indictment No. 1339-9-84-A

P-5 Superior Court of New Jersey, Atlantic County Judgement of Conviction on Indictment No. 1339-9-84-A

For the Respondent:

R-1 Letter of Joseph C. Fenton, Sr., vice-president of S.W. Kooperman, Inc., dated July 6, 1989

WITNESSES

For the Petitioner:

Shawn L. Saxon, the respondent

For the Respondent:

Shawn L. Saxon, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-66
LICENSE NO. 54417-21
REGISTRATION NO. 55702-40
OAL DOCKET NO. CCC 9380-88
ORDER NO. 89-35-11

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ORDER

CLAUDIA A. SIMPSON,
a/k/a CLAUDIA L. SIMPSON

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 30, 1989,

IT IS on this 19th day of September 1989, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Claudia A. Simpson a/k/a Claudia L. Simpson is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9380-88
(OAL DKT. NO. CCC 6088-88 -
ON REMAND)
AGENCY DKT. NO. 88-66

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
CLAUDIA L. SIMPSON,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Claudia L. Simpson, respondent, pro se

Record Closed: May 30, 1989 Decided: July 14, 1989

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on September 2, 1987, seeking the revocation of the casino hotel employee registration and casino employee license of the respondent, Claudia L. Simpson, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Ms. Simpson requested a hearing and the matter was transmitted to the Office of Administrative Law on August 15, 1988, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

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The matter was scheduled for a prehearing conference before Administrative Law Judge Stephen W. Thompson on October 6, 1988. On that date, Ms. Simpson failed to appear, and she did not offer any explanation for her non-appearance within the ten-day period thereafter. Judge Thompson issued an initial decision on October 18, 1988, in which he concluded that the respondent no longer sought a hearing in this matter and that her license and registration should be revoked. By order dated December 5, 1988, the Commission concluded that the respondent had provided an acceptable explanation for her non-appearance before Judge Thompson, and the matter was remanded to the Office of Administrative Law.

On March 13, 1989, Judge Thompson conducted a prehearing conference, and at that time, the parties agreed that the issues in this matter are:

1. Whether respondent's continued licensure and/or registration is inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(2) because she is alleged to have committed a violation of N.J.S.A. 24:21-20(a)1, which is analogous to N.J.S.A. 2C:35-10, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g.

2. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within N.J.S.A. 5:12-90b.

After the prehearing conference, the matter was transferred to the undersigned for purposes of conducting the hearing and rendering an initial decision. The hearing took place on May 30, 1989, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I find that the facts in this matter are not in dispute.

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In 1973, Ms. Simpson started to work as a blackjack dealer in the gambling industry in Reno, Nevada. In 1982, she and her husband moved to Atlantic City. Initially, the respondent obtained a casino hotel employee registration, and she worked as a waitress in the Tropicana Hotel and Casino. After she obtained her casino employee license, Ms. Simpson got a job as a blackjack dealer at the Sands Hotel and Casino. She quit this job when she obtained a job as a blackjack dealer with Trump's Castle Hotel and Casino (Castle) in June 1987. Ms. Simpson continued to work for the Castle until her employment was terminated on August 8, 1987.

Sometime after Ms. Simpson and her husband had moved to New Jersey, they started having domestic problems, and she had difficulties raising her two step-children in addition to her own child. On the evening of August 7, 1987, Ms. Simpson and her husband had an argument and Ms. Simpson left their home. Ms. Simpson drank some alcoholic beverages and since she did not have sufficient money for a motel room, she slept in her car. On the next day—August 8, 1987—Ms. Simpson went to work. While she was taking a break in the employees' lounge, the respondent confided to a co-worker that she was tired. Her co-worker offered to sell Ms. Simpson some cocaine, and Ms. Simpson paid her $100.00. The co-worker then took the respondent into the women's restroom, and in a bathroom stall she gave Ms. Simpson some cocaine and a straw in a paper cup. According to Ms. Simpson, she had never used cocaine before but knew what to do since she had observed other people "snort" cocaine. Ms. Simpson snorted some of the cocaine while in a bathroom stall, and she assumed that the bathroom attendant reported her action to the security office. Ms. Simpson did not use all of the cocaine and she put the remainder in her pocketbook to be used later.

After she returned to work, Ms. Simpson was asked to leave the casino floor and a security guard took her to the Division's office, where Detective Joseph Eden, the New Jersey State police officer assigned to the Castle, questioned her. In response to the detective's questioning, Ms. Simpson admitted that she had snorted cocaine and she gave the detective the remaining amount of cocaine she had in her possession. According to Ms. Simpson, she could not recall exactly what she told the detective; however, she did tell him about her matrimonial problems, and that she used the cocaine in order to relax and to be able to finish working her shift. Detective Eden arrested the respondent. During the hearing, Detective Eden confirmed that he arrested the respondent at the

Castle and that she had told him that she had used cocaine to calm herself because she was having matrimonial problems. Detective Eden could not recall whether or not the respondent had told him that this was the first time that she had used cocaine.

Thereafter, she was indicted for the possession of a controlled dangerous substance, cocaine, contrary to provisions of N.J.S.A. 2C:35-10 (P-1). Ms. Simpson was admitted into the Pre-Trial Intervention (PTI) Program. As part of the program, she was required to see a probationary officer every two weeks for a one-year period, and she was required to pay a fine and to perform twenty-five hours of community service. Ms. Simpson performed the community service work for the American Cancer Society (R-5), and on her own, she worked extra hours for this group. In addition, Ms. Simpson paid a fine of $1,200.00. According to the terms of the PTI, Ms. Simpson was not required to submit to any urine tests for drug usage. Ms. Simpson successfully completed the PTI program and the indictment against her was dismissed on July 14, 1988 (R-6).

After she lost her job at the Castle, Ms. Simpson worked as a waitress at the Oceanfront Restaurant and as a salesperson for Outdoor World. For the last seven months, she has worked as a verification officer for La Renaissance, Inc. In that position, Ms. Simpson does public relations work and she handles the office papers for persons who purchase property from her employer.

Ms. Simpson is now thirty-seven years old, and she and her husband are divorced. Ms. Simpson currently supports herself and her son.

In regard to the August 8, 1987 incident, Ms. Simpson stated that she purchased the cocaine because she felt mixed up and needed to relax. Although she had never used cocaine before, Ms. Simpson admitted that she had used marijuana on a number of occasions; however, she stressed that she had never used it while she was working in a casino. Ms. Simpson has not used any type of drugs since her August 8, 1987 arrest, and she is trying to start a new life.

On behalf of the respondent, several people submitted letters attesting to her good character, honesty and integrity. By letters dated May 25, 1989, Chuck McDonnell, sales manager, and Karen Hunter, deeding and contracts manager, both employed by La Renaissance, Inc., stated that Ms. Simpson has been an outstanding employee and a person of outstanding moral character (R-1, R-2). Both Mr. McDonnell and Ms. Hunter stated that they have never seen Ms. Simpson use any alcohol or drugs, and according to

Ms. Simpson, both of them are aware of the August 8, 1987 incident. By letter dated May 19, 1988, the assistant sales manager for Outdoor World stated that Ms. Simpson worked for the company between January 1989 and June 1989 and was an asset to the company (R-3). According to Ms. Simpson, she did not recall if the assistant sales manager was aware of the August 8, 1987 incident; however, she did inform the company of the incident before it hired her. Additionally, Anthony Pullella, manager of the Oceanfront Restaurant, submitted a letter dated May 23, 1989, in which he stated that the respondent was a dependable, reliable and trustworthy employee who did not use drugs while employed by the restaurant (R-4). According to Ms. Simpson, Mr. Pullella was aware of the August 8, 1987 incident.

CONCLUSIONS OF LAW

Deputy Attorney General Ralph L. Fusco stated that it is the position of the Division that the use of a controlled dangerous substance by a licensee or registrant while at work in a casino is inimical to the provisions of the Casino Control Act, and Mr. Fusco argued that the respondent's license and registration should be revoked.

On her on behalf, Ms. Simpson recognized that she made a mistake at a time when she was having matrimonial problems. Since then, she has received a divorce and she is now trying to start a new life. Ms. Simpson has to work to support herself and her infant son.

Based on the facts in this matter, I **CONCLUDE** that the Division has shown that the respondent used cocaine while she was working at the Castle. This act constitutes a violation of N.J.S.A. 2C:35-10, which is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In order to decide whether this conduct is inimical pursuant to the provisions of N.J.S.A. 5:12-86(c)2, it is necessary to consider the circumstances underlying the incident as well as the respondent's subsequent conduct, i.e., her rehabilitation. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, 10 N.J.A.R. 244 (1979).

The Casino Control Act sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of licensure:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated offense or conduct;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90b]

In addition, since the respondent has a registration it is also necessary to consider the issue of rehabilitation pursuant to N.J.S.A. 5:12-90d, which sets forth similar criteria to be considered in determing whether or not a person has shown rehabilitation for purposes of retaining a casino hotel employee registration.

As to rehabilitation, the respondent was a mature person at the time she used cocaine in the casino. Although Ms. Simpson was having domestic problems at the time, there is no question that she was aware of what she was doing and that the use of cocaine is a serious offense, especially when engaged in by a casino employee on casino premises. Although this offense is Ms. Simpsons' only criminal act, it is an offense which is contrary to the public policy of the Casino Control Act. This policy requires the Commission to exercise strict control over all casino employees in order to sustain the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations, N.J.S.A. 5:12-1a(6).

Since Ms. Simpson completed the PTI program only approximately one year ago, I **CONCLUDE** that insufficient time has lapsed for her to show by clear and convincing evidence that she is rehabilitated pursuant to the provisions of either N.J.S.A. 5:12-90b or N.J.S.A. 5:12-90d.

Further, I **CONCLUDE** that Ms. Simpson's action constitutes an inimical offense pursuant to the provisions of N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Lastly, based on the same facts, I **CONCLUDE** that at present Ms. Simpson cannot establish her good character, honesty and integrity by clear and convincing evidence as required for licensure pursuant to N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the casino employee license and the casino hotel employee registration of Claudia L. Simpson be **REVOKED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 14, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 19 [redacted]
DATE

Jaynee LaVecchia/H.S.
OFFICE OF ADMINISTRATIVE LAW

caj/EE

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Indictment filed against Claudia L. Simpson by the Atlantic County Grand Jury

For the Respondent:

R-1 Letter dated May 25, 1989, from Chuck McDonnell, sales manager of La Renaissance, Inc.

R-2 Letter dated May 25, 1989, from Karen Hunter, deed and contracts manager, of La Renaissance, Inc.

R-3 Letter dated May 19, 1989, from the assistant sales manager of the Outdoor World

R-4 Letter dated May 23, 1989, from Anthony Pullello, manager of the Oceanfront Restaurant

R-5 Certification of community services of hours of Claudia L. Simpson

R-6 Order of dismissal of the indictment filed against Claudia L. Simpson

WITNESSES:

For the Petitioner:

Claudia L. Simpson
Detective Joseph Eden

For the Respondent:

Claudia L. Simpson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-110; 89-129
APPLICATION NO. 73479-21
REGISTRATION NO. 27577-40
OAL DOCKET NO. CCC 8089-88; 8452-88
ORDER NO. 89-27-15

APPLICATION OF ROBERT A. SINGLETARY
FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

ORDER

Complainant,

v.

ROBERT A. SINGLETARY,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 5, 1989,

IT IS on this 10th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL BB

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 8089-88
AND CCC 8452-88
(CONSOLIDATED)
AGENCY DKT. NOS. 89-EA-110
AND 89-129

ROBERT A. SINGLETARY,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Robert A. Singletary, petitioner, pro se

Charles Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 13, 1989 **Decided: May 30, 1989**

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This contested case concerns two consolidated matters. The first is the application of the petitioner for licensure as a casino employee. By letter report to the Casino Control Commission dated September 2, 1988, the Division of Gaming Enforcement objected to the petitioner's licensure, based upon his alleged conviction in 1986 of aggravated assault, contrary to N.J.S.A. 2C:12-1b(2), a disqualifier from licensure under section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1et seq.).

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This matter also concerns the complaint of the Division filed with the Commission on November 2, 1988, seeking revocation of the petitioner's casino hotel employee registration, based upon the aforementioned alleged conviction. At the request of the Commission and with the consent of the parties, these matters are consolidated for hearing. These are the issues:

1. Has the petitioner been convicted of aggravated assault, contrary to N.J.S.A. 2C:12-1b(2), which would be a disqualifier from licensure and from registration, pursuant to sections 86c(1), 90e and 91b of the Casino Control Act.

2. Has the petitioner, if he has been convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.

3. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on his license application was received by the Casino Control Commission on October 26, 1988. On November 4, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. On November 18, 1988, the Commission transmitted the contested case concerning the Division's complaint against the petitioner for consolidation with the hearing on the petitioner's license application.

A telephone prehearing conference was held on January 31, 1989. The hearing was thereafter held as scheduled on April 13, 1989, in Atlantic City, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts are essentially undisputed. The petitioner is a 32-year-old resident of Atlantic City, New Jersey, and he holds casino hotel employee registration no. 27577-40. The petitioner completed high school and he attended

college until financial difficulties forced him to return to Atlantic City. He has lived at his present address for 20 years.

In December 1985, the petitioner was indicted by the Atlantic County Grand Jury (Exhibit R-1) on charges of aggravated assault contrary to N.J.S.A. 2C:12-1b(1) and (2); possession of a weapon contrary to N.J.S.A. 2C:39-5(d), and possession of a weapon for unlawful purposes contrary to N.J.S.A. 2C:39-4. Testifying at the hearing, the petitioner explained that these charges arose from a situation which had occurred in his home. A man with whom the petitioner had shared a friendship, Tyrone Hart, visited the petitioner and at some point in their conversation Hart asked the petitioner for money. According to the petitioner, he asked Hart to leave the home and Hart then picked up a knife and attacked the petitioner. The petitioner stated sincerely that he could not believe such an event would happen out of a friendship, but he had no choice except to fight back.

According to the petitioner, he nearly lost two fingers as a result of the altercation. Hart was admitted to the Atlantic City Medical Center with stab wounds to his neck and right knee (Exhibits P-8 and P-9). Hart gave statements to the police (Exhibits P-7 and P-2) which, if believed, would indicate that the petitioner attacked him without provocation. According to the petitioner, these statements are false. On January 27, 1986, the petitioner entered a plea of not guilty to the aforementioned indictment.

The petitioner was tried with a jury on four days beginning May 27, 1986. He was found guilty of one count of aggravated assault, contrary to N.J.A.C. 2C:12-1b(2), possession of a weapon and possession of a weapon for unlawful purposes. On July 3, 1986, the petitioner was sentenced on the aggravated assault count to 364 days incarceration in the Atlantic County Jail and probation for two years. The weapons charges were merged and the sentence was the same as for the aggravated assault count, to be served concurrently. The petitioner was also ordered to pay all medical expenses of the victim which were not covered by insurance and was further ordered to pay $25 to the Violent Crimes Compensation Board (Exhibit P-2).

In his sentence work sheet, Honorable Robert Neustadter, J.S.C., listed several aggravating and mitigating factors. The aggravating factors as reasons for his sentence included the nature and circumstances of the offense and the role of the petitioner, the gravity and seriousness of harm inflicted on the victim, and the need for deterring the petitioner and others from violating the law. Numerous mitigating

factors were identified. These included that the petitioner may have acted under a strong provocation and the victim of the petitioner's conduct may have induced or facilitated its commission. In addition, Judge Neustadter noted that the petitioner has no history of prior delinquency or criminal activity and had led a law-abiding life for a substantial period of time before the commission of the offense. Judge Neustadter also noted that the petitioner's conduct was the result of circumstances unlikely to recur, the character and attitudes of the petitioner indicate that he is unlikely to commit another crime or offense, and the petitioner was particularly likely to respond affirmatively to probationary treatment (Exhibit P-2).

It was the testimony of the petitioner that being indicted and convicted were embarrassing and humiliating for him. After serving 90 days of his 364-day sentence, the petitioner was paroled from the Atlantic County Jail on October 3, 1986 (Exhibit P-11). In order to comply with the terms of his parole, the petitioner was required to have a job, stay out of trouble, and remain in good standing in his community. The petitioner complied with these terms. On April 10, 1987, the petitioner was released from parole supervision (Exhibit P-10).

The petitioner's work experience includes nine years as a telephone operator with the telephone company. The petitioner became discouraged during that employment because he did not advance while other employees around him did. The petitioner left that employment with the phone company when a person whose sexual advance the petitioner declined made working with the company miserable for the petitioner.

In March 1986, while the aforementioned charges were pending against the petitioner, he obtained his first employment in the casino industry. The petitioner worked as a telephone operator at Harrah's Casino Hotel. However, it was necessary for the petitioner to be away from Harrah's during his trial and he was told by Harrah's after the trial that he was terminated. The petitioner noted that he had been offered a job by the Tropicana Casino Hotel at the same time he accepted the job with Harrah's. Although the Tropicana lists the petitioner as having not shown up for work, the petitioner testified that he did call the Tropicana and let them know that he would not be working for them.

The petitioner's other employment in the casino industry includes a day as a tram attendant, and a few months as a bar porter at the Showboat Casino Hotel. According to the petitioner, he was under a doctor's care as a result of an

automobile accident and he was not supposed to lift heavy objects, as a bar porter must do. Around September 1987, the petitioner resigned from the Showboat. The petitioner then worked for about a month in January 1988 as a bar porter at Trump's Castle. His last casino employment was a heavy porter at the Sands Casino Hotel. In June 1988, the petitioner left that employment after approximately four months because his fellow workers and supervisor made things difficult for him after the petitioner complained about employees using drugs on the job.

A letter from the petitioner's landlord of over 20 years was admitted into evidence as Exhibit P-1. Apartment Manager Patricia Oliver wrote that the petitioner is a conscientious resident and that he is an asset to the Atlantic Villas Apartment Community. She described the petitioner as honest and straightforward and a pleasure to talk with (Exhibit P-1). It was the petitioner's testimony that his neighbors are trying to achieve a drug-free housing area. When the petitioner was released from jail, his neighbors asked him to help. According to the petitioner, the rental agent and he are trying to formulate a newsletter to help parents and children deal with the drug problem.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2) and 90b of the act, an applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(1), the Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure.

Participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be

solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the act, the Commission may revoke the registration of any registrant who is disqualified on the basis of his conviction of any offense which is specifically listed under section 86c of the act.

It is undisputed that the petitioner was convicted after a jury trial in May 1986 of aggravated assault, contrary to N.J.S.A. 2C:12-1b(2). This is an offense specifically identified as a disqualifier under section 86c(1) of the Casino Control Act. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his conviction of a disqualifying offense.

Section 91d of the act provides that the petitioner's casino hotel employee registration should not be revoked on the basis of his conviction of an offense identified in the act as disqualification criteria, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the petitioner shall not be denied a casino employee license on the basis of his otherwise disqualifying conviction, provided that he has affirmatively demonstrated his rehabilitation pursuant to section 90h of the act. In determining whether rehabilitation has been affirmatively demonstrated, the following facts under N.J.S.A. 5:12-90h (the language of section 91d is almost identical) shall be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the

recommendation of persons who have or have had the applicant under their supervision.

The petitioner is now 32 years old. His conviction in 1986 resulted from an isolated instance of criminal activity which occurred in November 1985. The petitioner has no other record of arrests or convictions. The crime for which he was convicted, aggravated assault contrary to N.J.S.A. 2C:12-1b(2), resulted in a sentence of incarceration for 364 days. The petitioner served 90 days of the sentence and was then paroled. While the harm which he inflicted was an aggravating factor considered by the sentencing judge, the mitigating factors which the judge considered included the possibility that the petitioner had acted under a strong provocation and that the victim of the petitioner's conduct may have induced or facilitated its commission.

The sentencing judge indicated that the petitioner was unlikely to commit another crime and that he was particularly likely to respond affirmatively to probationary treatment. The petitioner satisfactorily complied with the terms of his parole and he has had no further reporting requirement since April 1987. Thus, a substantial period of time has passed since the petitioner's one criminal offense without any further involvement of the petitioner with the criminal justice system. It is clear that the petitioner's criminal episode in 1985 was isolated and out of character. The petitioner has resided in the same place for 20 years and he is assisting his neighbors in their fight against drugs in the community.

Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has been convicted of a disqualifying offense under section 86c(1) of the act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h and 91d of the act. I also **CONCLUDE** on the basis of the credible evidence presented in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Robert A. Singletary be **DISMISSED**. It is further **ORDERED** that the application of Robert A. Singletary for a casino employee license permitting him to work in a licensed casino as a slot attendant be **GRANTED**.

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This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 30, 1989 — Joseph F. Fidler
DATE — **JOSEPH F. FIDLER, ALJ**

Agency Receipt:

5/31/89 — Kimberly Woods
DATE — **CASINO CONTROL COMMISSION**

Mailed to Parties:

JUN 1 1989 — Jaynee LaVecchia/KS
DATE — **OFFICE OF ADMINISTRATIVE LAW**

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter from Patricia Oliver dated April 12, 1989

P-2 Statement of Tyrone Hart dated January 8, 1986

P-3 Letter concerning mitigating factors dated July 8, 1986

P-4 Investigative Report of Robert Browne

P-5 Handwritten note dated November 11, 1985

P-6 Affidavit dated April 10, 1986

P-7 Statement of Tyrone Hart

P-8 Atlantic City Medical Center Admission Record

P-9 Atlantic City Medical Center Emergency Service Registration

P-10 Certificate of Termination from Parole dated April 10, 1987

P-11 Certificate of Parole dated September 18, 1986

For the respondent:

R-1 Certified Indictment

R-2 Judgment of Conviction and Sentencing Statement

WITNESSES

For the petitioner:

Robert A. Singletary

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-12
APPLICATION NO. 1705-70
VENDOR I.D. NO. 06846
OAL DOCKET NO. CCC 5876-88
ORDER NO. 89-45-18

APPLICATION OF SWISS SERVICES OF MASSACHUSETTS, INC., FOR A CASINO SERVICE INDUSTRY LICENSE

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 15, 1989,

IT IS on this 16th day of November 1989, ORDERED that the initial decision is modified as follows:

1. The recommendation of the administrative law judge to license the applicant is premature because the investigation into the applicant's qualifications for licensure has not been completed by the Division of Gaming Enforcement (DGE).

2. The matter is returned to the DGE for completion of its investigation and the filing of a report on the application as expeditiously as possible.

IT IS FURTHER ORDERED that the initial decision, as modified, is adopted and the applicant is found not disqualified by reason of any failure to cooperate as required by N.J.S.A. 5:12-80d.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5876-88
AGENCY DKT. NO. 88-CSI-12

SWISS SERVICES OF MASSACHUSETTS, INC.,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Wayne R. Rosenlicht, Esq., for petitioner (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Frederick J. McDonough, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 6, 1989 Decided: October 10, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of petitioner Swiss Services of Massachusetts, Inc., for licensure as a casino service industry, pursuant to section 92c of the Casino Control Act (*N.J.S.A.* 5:12-1 *et seq.*). By letters to the Casino Control Commission dated March 13, 1987, and January 22, 1988, the Division of Gaming Enforcement (Division) has objected to licensure of the petitioner on the ground that the petitioner has failed to cooperate with the Division's investigation as required by section 80d of the act. These are the issues:

1. Is the petitioner disqualified from licensure as a casino service industry based upon its alleged failure to cooperate with the investigation performed by the Division of Gaming Enforcement, pursuant to section 80d of the Casino Control Act.

2. Has the petitioner established by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure as a casino service industry, pursuant to section 92c of the act and *N.J.A.C.* 19:43-1.3c.

PROCEDURAL HISTORY

By letter from counsel dated July 25, 1988, the petitioner notified the Casino Control Commission that it requested a hearing on its license application. On August 5, 1988, this matter was transmitted by the Commission to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq*. A telephone prehearing conference was held on October 18, 1988, at which time counsel agreed that further investigation by the Division might result in withdrawal of the Division's objection to the petitioner's licensure. It was ultimately determined that the Division would not drop its objection and a second telephone prehearing conference was held on March 16, 1989.

The hearing in this matter was held as scheduled in Pleasantville, New Jersey, on May 16, 1989. I thereafter determined that it was necessary to review the transcript in this matter and the record closed when the transcript was received on June 6, 1989. Issuance of this initial decision was delayed as a result of illness.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The petitioner is a millwork and general contracting construction firm which seeks licensure as a casino service industry. The company did roughly three and a half million dollars worth of business with the Sands Casino Hotel in Atlantic City between 1982 and 1986. The company has also done business amounting to about a half million dollars with Bally's Casino during the same time period.

Division of Gaming Enforcement Agent Deborah Grusemeyer testified that she conducts investigations of casino service industry applicants and that her particular

specialty was within the construction unit. She began an investigation of petitioner Swiss Services in the summer of 1986. Ms. Grusemeyer identified the president of Swiss Services to be Abbott Elkind, a 50 percent owner. According to Ms. Grusemeyer, she encountered difficulties in acquiring certain information from the petitioner during the course of her investigation. Specifically, federal and state tax returns, a net worth statement covering Mr. and Mrs. Elkind, and a personal history disclosure form for Project Foreman Guy Maillaro were requested but were not provided.

It was the testimony of Ms. Grusemeyer that she had a telephone conversation with Mr. Elkind in September 1986 to request the foregoing information. This request was confirmed in writing by letter from the Division dated September 18, 1986 (Exhibit R-1). The certified mailing was signed for by Abbott Elkind's father, Paul Elkind (Exhibit R-2). Ms. Grusemeyer candidly acknowledged that she received some of the requested documents in response to this letter, but did not receive everything which she had requested.

In October 1986, Ms. Grusemeyer traveled to Massachusetts to further investigate the petitioner. She met with Robert Hurwitz, who was then Mr. Elkind's accountant. Ms. Grusemeyer asked Mr. Hurwitz about the net worth statement which had been requested but which had not been provided. Mr. Hurwitz found the blank net worth form in his files and Ms. Grusemeyer asked him why it had not been filled out. She had hoped that it would be ready for her so that financial information could be confirmed. Mr. Hurwitz left the room for a short while and then returned to say that the net worth statement would be taken care of. However, it was the testimony of Ms. Grusemeyer that the completed net worth statement was never provided to her.

Ms. Grusemeyer also testified that she visited the Atlantic City offices of the petitioner and spoke with its employee Sharon McMullen, who was responsible for maintaining financial records. Ms. Grusemeyer hoped that she would be able to get the rest of the information which she sought. She still needed the net worth statement, 1986 tax returns, and the correct personal history disclosure form for Mr. Maillaro. According to Ms. Grusemeyer, the disclosure form filed by Mr. Maillaro had been for a casino hotel employee registration, rather than the required form for a casino service industry application.

On January 27, 1987, a letter was sent to Mr. Elkind from the Division of Gaming Enforcement which described the Division's efforts to obtain various documents required to be filed as part of the petitioner's application investigation (Exhibit R-3). This letter advised Mr. Elkind that failure to produce the requested information could result in denial of the petitioner's application. According to Ms. Grusemeyer, she had also informed Ms. McMullen during their conversation in November 1986 that the petitioner's failure to produce the requested information would reflect negatively on its suitability for licensure. Ms. Grusemeyer had made phone calls to try to speak with Mr. Elkind and had left messages for him. She hoped that Ms. McMullen would try to reach out to him. Ms. Grusemeyer testified that she learned the day before the hearing that Mr. Maillaro had filed the correct personal history disclosure form in October 1988 (Exhibit P-2). Her investigation had ended substantially earlier.

Several witnesses testified on behalf of the petitioner. Robert Van Sciver is Director of Construction at the Sands Casino Hotel, and he holds a casino key employee license. In the course of his duties, he has had dealings with petitioner Swiss Services and Mr. Elkind. Mr. Van Sciver has no qualms about the honesty, business judgment, and integrity of the petitioner and Mr. Elkind, and he knows of no reason why the petitioner should not be licensed. Mr. Van Sciver acknowledged that he has socialized with Mr. Elkind and that he considers him to be a very good friend.

Abbott Elkind testified that he is the owner of Swiss Services of Massachusetts, Inc., which got started in the construction business about 22 years ago. Mr. Elkind, who is 53 years old, is recently divorced after 31 years of marriage.

According to Mr. Elkind, Robert Hurwitz was his accountant for 15 or 20 years. In addition, Mr. Hurwitz was a close personal friend. A few years ago, Mr. Elkind first began to realize that his then wife and Mr. Hurwitz were having an affair. Mr. Elkind's marital problems caused serious disruption in his personal life and in his business life as well.

Mr. Elkind testified that he does not recall being contacted by Agent Grusemeyer in September 1986. However, he does not deny that the contact took place. He does recall that he instructed Mr. Hurwitz to provide the Division with whatever documents and information it wanted. He did this on more than one occasion.

Mr. Elkind agreed that it was his father who had signed for the September 18, 1986, Division letter requesting certain information in furtherance of the licensure investigation (Exhibits R-1 and R-2). Mr. Elkind testified sincerely that he never saw this letter. It was his intention all along to cooperate with the Division. Mr. Elkind emphasized that he had and has no reason to withhold information such as tax returns, net worth statements, and personal history disclosure forms from the Division. However, given his marital difficulties and the involvement of his former accountant, Robert Hurwitz, in those difficulties, Mr. Elkind had been unable to obtain certain information. In particular, he has been unable to obtain the requested tax information.

Mr. Elkind has engaged a new accountant. The affidavit of CPA Ronald Masiello was admitted into evidence as Exhibit P-3. According to this affidavit, Mr. Masiello was retained by Mr. Elkind in October 1988 for the purposes of serving as his personal accountant and corporate accountant for his company, Swiss Services. He has been asked to prepare tax returns for Swiss Services for the years 1986 and 1987, since no such returns were filed by Mr. Hurwitz. Mr. Masiello states that he is having difficulty preparing these tax returns because Mr. Hurwitz has failed to return documents which are necessary for their preparation. Mr. Masiello has contacted alternative sources for the information, in order to prepare the returns.

The affidavit of Mr. Elkind's Massachusetts attorney, Penelope A. Kathiwala, was admitted into evidence as Exhibit P-4. According to Ms. Kathiwala, she has attempted on a number of occasions to obtain the personal and business records of Mr. Elkind which were in the possession of Mr. Hurwitz (Exhibit P-5). She has been unsuccessful. Ms. Kathiwala summarized the situation:

> Since Mr. Hurwitz is personally suing Mr. Elkind as a result of a business condo deal and for services rendered with respect to accounting work, then I would like to suggest that Mr. Elkind will be unable to retrieve any of those records from Mr. Hurwitz, who in my opinion, has these records but since he is now involved with Mrs. Elkind, is in fact living with Mrs. Elkind and engaged to be married to her, I doubt that those records will ever be produced. (Exhibit P-4, emphasis in the original).

Mr. Elkind testified that he is aware Mr. Hurwitz was visited by Agent Grusemeyer in October 1986. He knows this because Mr. Hurwitz called him while the agent was there. According to Mr. Elkind, he told Mr. Hurwitz to cooperate and to give the agent whatever was needed. It was Mr. Elkind's expectation that Mr. Hurwitz would fill out the net worth statement, since he had all of Mr. Elkind's

financial information and he was in a much better position than Mr. Elkind to perform the task.

Mr. Elkind testified sincerely that he did not learn until 1987 that Mr. Hurwitz had not provided the necessary information to the Division. At the time Mr. Elkind received the letter of the Division dated January 27, 1987 (Exhibit R-3), he was experiencing serious marital difficulties. He was having constant disagreements with his wife and at that point he had an idea that she was having an affair with Mr. Hurwitz. Because of the domestic disruption, Mr. Elkind began to neglect his businesses. In August of 1987, Mrs. Elkind moved out of the house. In December 1987, Mr. Elkind learned for sure that she was having an affair with Mr. Hurwitz. During that month, his wife began divorce proceedings.

Mr. Elkind testified that Swiss Services is his primary source of income. He has attempted to provide the Division with the information which it seeks. On October 20, 1988, Mr. Elkind's new accountant prepared a statement of personal net worth for Mr. Elkind at estimated current values (Exhibit P-6). Estimates were necessary because the precise information could not be obtained from Mr. Hurwitz. Also in October 1988, the correct personal history disclosure form for Guy Maillaro was filed (Exhibit P-2). According to Mr. Elkind, Mr. Maillaro is in charge of operation of the construction end of petitioner's business. The 1986 tax return which the Division requested cannot yet be produced because it does not exist.

Guy Maillaro also testified at the hearing. He had originally filed a personal history disclosure form 4A. in October 1986 (Exhibit P-7). Within about eight weeks after filing that form, Mr. Maillaro left employment with the petitioner. He returned to work for the petitioner in January 1988. When Mr. Maillaro learned that he had to file a different disclosure form, he took care of that requirement in October 1988 (Exhibit P-2). Mr. Maillaro stated that he has 25 years of experience in construction. It was his opinion that the petitioner can definitely perform its construction work satisfactorily.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

As an applicant for a non-gaming casino service industry license, petitioner Swiss Services must be licensed in accordance with the rules of the Casino Control Commission, pursuant to *N.J.S.A.* 5:12-92c. Under *N.J.A.C.* 19:43-1.3(c), each applicant for such a license must establish by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure. Those whose qualifications must be established as a prerequisite to the licensure of the enterprise pursuant to section 92c of the act are identified in *N.J.A.C.* 19:43-1.14(a)2. These include the enterprise and each owner holding a beneficial interest in excess of five percent, as well as each director of the enterprise and each officer significantly involved in the conduct of business with a casino licensee.

Pursuant to section 92d of the act, a non-gaming casino service industry license may be denied to any applicant disqualified in accordance with the criteria set forth in section 86 of the act. In addition, section 80 of the act provides:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation, or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the commission.

The gravamen of the Division's objection to the petitioner's licensure is the petitioner's failure to timely provide certain information which was material to the Division's investigation of the petitioner's suitability for licensure. It is well settled that willful failures to disclose material information, or failures to disclose evidencing a conscious disregard for the regulatory system, warrant disqualification. *See N.J.A.C.* 5:12-80d and 86b. However, when the failure to provide the requested information is not willful and does not represent a conscious disregard for the regulatory system, the severe response of disqualification would not ordinarily be warranted. In this matter, it is undisputed that the petitioner and its qualifier Abbott Elkind, did not timely provide the Division with certain requested information, including tax returns for specific years and a personal net worth statement. However, this failure to provide the requested information resulted

from the extraordinarily disruptive matrimonial rift experienced by Mr. Elkind while the petitioner's application was being investigated.

Mr. Elkind intended to provide the Division with all of the information which it sought. Unfortunately, he relied in large part upon his accountant of many years. It is clear in retrospect that this reliance was misplaced, since Accountant Hurwitz was at that very time involved in an affair with Mr. Elkind's wife; an affair which would end their marriage of 31 years. As his domestic difficulties came to his attention, Mr. Elkind was understandably distracted from his business ventures. The responsibility to provide requested information to the Division of Gaming Enforcement was unintentionally neglected for a time. Mr. Elkind has since attempted in a diligent manner to provide whatever requested information is actually available.

Based upon the foregoing facts and the applicable law, I **CONCLUDE** that petitioner Swiss Services (and its qualifier, Abbott Elkind) have not willfully, or with conscious disregard for the regulatory system, failed to cooperate with the investigation performed by the Division of Gaming Enforcement. Thus, I further **CONCLUDE** that the petitioner is not disqualified from licensure as a casino service industry, within the meaning of section 80d of the Casino Control Act.

The credible evidence in the record establishes that the petitioner is a competent construction business. Moreover, Mr. Elkind is known to be a fair and honest businessman. Based on these attributes and in light of the conclusions above, I further **CONCLUDE** that the petitioner has established by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure as a casino service industry, pursuant to section 92c of the Casino Control Act and *N.J.A.C.* 19:43-1.3c.

ORDER OF DISPOSITION

Accordingly, the application of Swiss Services of Massachusetts, Inc., for licensure as a casino service industry pursuant to *N.J.S.A.* 5:12-92c is GRANTED.

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This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

October 10, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

10/11/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 13 1989
Date

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Receipt for filing Personal History Disclosure Form, dated October 30, 1986

P-2 Personal History Disclosure Form No. 4, filed October 1988

P-3 Affidavit of Ronald Masiello, dated May 5, 1989

P-4 Affidavit of Penelope A. Kathiwala, dated May 6, 1989

P-5 Correspondence concerning attempts to obtain information from Robert Hurwitz

P-6 Statement of Personal Net Worth

P-7 Personal History Disclosure Form 4A, dated September 1986

For the respondent:

R-1 Letter from the Division of Gaming Enforcement to Abbott Elkind, dated September 18, 1986

R-2 Certified Mail Return Receipt

R-3 Letter from the Division to Mr. Elkind, dated January 27, 1987

R-4 Letter from the Casino Control Commission to Mr. Elkind, dated October 2, 1987

R-5 Not in evidence

WITNESSES

For the petitioner:

Robert Van Sciver
Abbott Elkind
Guy Maillaro

For the respondent:

Deborah Grusemeyer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-195
LICENSE NO. 26316-21
OAL DOCKET NO. CCC 9247-88
ORDER NO. 89-31-17

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF LINDA J. TALLEY

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 3rd day of August 1989, ORDERED that the initial decision is modified as follows:

> Assuming arguendo the Division of Gaming Enforcement had established that the applicant committed theft, the clear and convincing evidence of rehabilitation she produced would warrant the conclusion that the offense was not inimical.

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9247-88
AGENCY DKT. NO. 89-EA-195

LINDA J. TALLEY,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Daniel L. Cohen, Esq., for petitioner (Krantz & Cohen, attorneys)

Charles F. Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 5, 1989 Decided: June 19, 1989

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

The petitioner seeks renewal of her casino employee license, which permits her to work as a blackjack and roulette dealer in a licensed casino. By letter report to the Casino Control Commission dated October 25, 1988, the Division of Gaming Enforcement objected to the renewal of licensure, based upon the petitioner's termination by the Tropicana Hotel Casino from her position as a slot change person on April 4, 1985, for allegedly short-changing patrons. The Division alleges that the petitioner stole between $10 and $30 from patrons in this manner on three or four occasions. The Division also alleges that the petitioner was subsequently terminated from her position as a porterette by the Sands Hotel Casino on June 14, 1985, having failed to inform the Sands of her employment at the Tropicana and the circumstances surrounding that termination.

New Jersey Is An Equal Opportunity Employer

These are the issues:

1. Has the petitioner committed acts which constitute the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, and if so, would renewal of her licensure be inimical to the policy of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the act.

2. Has the petitioner established by clear and convincing evidence that she possesses the good character, honesty and integrity required for casino employee licensure, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on her renewal application was received by the Casino Control Commission on December 1, 1988. On December 20, 1988, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on February 28, 1989. The hearing was thereafter held as scheduled on April 10, 1989. I subsequently determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on May 5, 1989.

FINDINGS OF FACT

Although the parties urge different interpretations of the facts in this matter, the material facts themselves are essentially undisputed. The petitioner is a 28-year-old resident of Atlantic City, New Jersey, and she holds casino employee license no. 26316-21. Since July 7, 1985, the petitioner has been an employee at Trump Castle Hotel and Casino. After about a year working in that casino's Environmental Services Department, the petitioner became a blackjack dealer in June 1986. Numerous letters from her supervisors at Trump Castle were admitted into evidence as Exhibit P-1. The petitioner's supervisors believe her to be a trustworthy, conscientious and personable employee, whom they hold in high regard.

The primary question in regard to renewal of the petitioner's casino employee license concerns her termination by the Tropicana Hotel Casino from her position as

a slot change person on April 4, 1985. Dennis McKelvey, formerly a Tropicana Security Employee, testified on behalf of the Division of Gaming Enforcement. According to Mr. McKelvey, who has been employed by the Atlantic County Prosecutor's Office since 1987, he received oral notice from a Tropicana employee on April 4, 1985, that the petitioner had been bragging that she had been taking money. He did not know the original source of this information. Mr. McKelvey and Sheldon Zucker, another Tropicana Security Investigator, questioned the petitioner in the slot manager's office concerning the allegation against her.

Mr. McKelvey testified that he confronted the petitioner with the allegation that she had been taking money from patrons by short-changing them. He stated that she admitted having done this on three or four occasions and the petitioner was then terminated and evicted from the premises. There were no complainants, so no criminal charges were filed. Mr. McKelvey stated that he did not believe that the petitioner signed any statement. He could not recall if the petitioner was physically searched, but her locker had been checked by other security personnel and nothing unusual was found.

Mr. McKelvey testified that the investigators were not law enforcement officials so they were not obligated to inform the petitioner of her rights. It was his belief that the Tropiciana Personnel Department would have afforded the petitioner a right to appeal from her termination, but he did not know if anyone informed her of that opportunity. Mr. McKelvey did not know how the short-changing took place. He acknowledged that "short-change" could mean a lot of things and that giving out the wrong change could be an honest mistake.

Tropicana Investigator Sheldon Zucker also testified. He stated that when the petitioner was interviewed, she admitted that she had taken $10 to $30 from patrons on three or four occasions since she was hired in July 1984. Mr. Zucker could not recall everyone who was present when the petitioner was questioned. He stated that the petitioner definitely was not told that if she did not admit the theft she would be reported to the police. He could not recall how long the interrogation of the petitioner took, but he stated that it would have been well under five hours. According to Mr. Zucker, if the petitioner had not admitted the theft, the investigators probably would have interviewed her fellow employees and would have started surveillance activities, including a random audit of the petitioner's daily bank. He recalled that on the day the petitioner was terminated, her bank was $6 short.

Division of Gaming Enforcement Agent Alfred Falco also testified. Agent Falco conducted an investigation of the petitioner's renewal application, which included disclosure of two terminations. The petitioner disclosed that she had been terminated from the Tropicana because of "money" and that she had been terminated from the Sands Casino Hotel for failure to advise of her prior casino employment. The Sands Casino Hotel confirmed to Agent Falco the reason for the petitioner's termination. The Tropicana told Agent Falco that the petitioner had been terminated for theft after admitting that she had short-changed patrons.

Agent Falco testified that he contacted the petitioner by telephone in July 1988 and asked her about the terminations. The petitioner told him that when she had been working as slot change person at the Tropicana in April 1985, her bank was $6 short when it was counted down. The petitioner stated to him that she had an argument with her supervisor and had signed some papers and was terminated. The petitioner denied that she had taken any money. She said to the investigator, "who'd be stupid enough to go around bragging that they stole money?" According to Agent Falco, the petitioner acknowledged that the Tropicana investigator's report concerning the incident was "for the most part" accurate. Significantly, the petitioner told Agent Falco in July 1988 that she had been unhappy and upset with her job at the Tropicana and had agreed to sign the papers for her termination. Agent Falco's investigation did not reveal any such papers.

Agent Falco testified that the petitioner had been a porterette at the Sands Casino Hotel from May 22 until July 14, 1985. His investigation did not reveal how the Sands learned about the petitioner's prior casino employment. Agent Falco did not know if it was the petitioner who herself revealed the information to the Sands. To his knowledge, these two terminations from casinos are the only two blemishes on the petitioner's career.

The petitioner testified on her own behalf. In addition to her employment at Trump Castle as a blackjack dealer since June 1986, the petitioner is also licensed for roulette. She went to dealer school in the evenings while employed in the Environmental Services Department. She was hired as a dealer with one audition and has had no problems (see Exhibit P-1).

The petitioner testified that she had actually worked at the Sands Casino prior to her employment at the Tropicana. Having given two weeks notice at the Sands, she was eligible as a rehire. After her termination from the Tropicana, the

petitioner was rehired at the Sands and she informed her supervisor of her previous termination. She did not realize that she had to otherwise disclose the information to the Sands.

In regard to her termination from the Tropicana Casino in April 1985, the petitioner testified that she was called off the casino floor in the middle of her shift. In an office, two investigators continually asked her questions and accused her of taking between $150 and $200. The petitioner was not allowed to leave the room. According to the petitioner, she finally said, "Okay, I'll sign papers." She explained that she had been unhappy working at the Tropicana anyway, so that when the investigators suggested that she sign the papers, she eventually agreed.

However, when the papers were brought to the petitioner, they stated that she had taken between $150 and $250. The petitioner refused to sign them. Subsequently, the petitioner was presented with papers which stated that she had taken between $10 and $30. The petitioner testified that she asked the investigators if she could go if she signed the papers. They said that she could, so she signed. She was not given a copy of the papers.

The petitioner also explained that as a change person, she had walked around a section of slot machines on the casino floor, providing change to patrons. She started her eight-hour shift with a bank of $300 and should have that amount at the end of the shift. The petitioner testified that there had been days when her bank was short in the middle of the shift and she had taken her own money from her locker to replace it. It was her sincere and believable testimony that she never intentionally short-changed a patron or intentionally stole from a casino.

It was the petitioner's testimony that except for her two terminations, she has never otherwise been disciplined by casinos. Furthermore, she has never had any trouble with the law. In addition to the letters from her casino supervisors, numerous letters from community members were admitted into evidence on the petitioner's behalf (Exhibit P-2). These letters attest to the petitioner's good character and trustworthiness.

All of the preceding evidence is essentially undisputed and believable, and it thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq., it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualifications. It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Among these qualifications is the requirement that an applicant for a casino employee license, or renewal of a casino employee license, must demonstrate that she possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the act.

Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to sections 86c(2) and 86g of the act, the Casino Control Commission shall deny renewal of licensure to any licensee who has committed an offense which would indicate that continued licensure would be inimical to the policy of the act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey. In this matter, it is alleged that the petitioner committed the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. It is undisputed that this alleged conduct was not prosecuted.

Pursuant to N.J.S.A. 2C:20-3, a person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof. The credible evidence in the record establishes that the petitioner told Tropicana investigators in April 1985 that she had taken $10 to $30 by short-changing patrons on three or four occasions since she was hired in 1984. Pursuant to N.J.S.A. 2C:20-2 and 3, theft by unlawful taking in this amount would be a disorderly persons offense. However, the petitioner testified credibly that she had been unhappy with her employment at the Tropicana and that she had simply told the Tropicana investigators that she had taken money by short-changing patrons so that she would be able to end her interrogation and leave.

The petitioner acknowledged that on occasion her bank was short. However, she also testified credibly that she on occasion took her own funds to make up the difference. Most significantly, the petitioner testified in an entirely straightforward and believable manner that she never intentionally took money from a patron or the casino. Accordingly, I **CONCLUDE** that the petitioner has not committed the offense

of theft by unlawful taking, within the meaning of N.J.S.A. 2C:20-3. Thus, I further **CONCLUDE** that the petitioner has not committed an offense which would indicate that her continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(2) of the Casino Control Act. Finally, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that she possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act. Therefore, I **CONCLUDE** that the petitioner's application for renewal of her casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Linda J. Talley for renewal of a casino employee license be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

June 19, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

6/19/89
Date

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 22 1989
Date

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Fifteen letters of recommendation

P-2 Seven letters of recommendation

For the respondent:

R-1 Not in evidence

WITNESSES

For the petitioner:

Linda J. Talley

For the respondent:

Dennis McKelvey
Sheldon Zucker
Alfred Falco

STATE v. NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-343
OAL DOCKET NO. CCC 4550-88
ORDER NO. 89-28-18

STATE OF NEW JERSEY, DEPARTMENT
OF LAW & PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,

Complainant,

ORDER

V.

STATE V. TRUMP PLAZA ASSOCIATES t/a
TRUMP PLAZA HOTEL AND CASINO AND
CAROL SKORUPSKI

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the parties' Stipulation of Facts and Settlement Agreement having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 12, 1989;

IT IS on this 18th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Trump Plaza Associates t/a Trump Plaza Hotel and Casino pay a total civil penalty in the amount of $5,000 for its admitted violations of N.J.S.A. 5:12-101(b); N.J.A.C. 19:45-1.25(e); N.J.S.A. 5:12-96(e); and N.J.A.C. 19:45-1.8(a)(2) and (3), due and payable upon

receipt of an invoice form the Commission's Division of Financial Evaluation and Control.

IT IS FURTHER ORDERED that Count II of the Division of Gaming Enforcement's complaint concerning the respondent Carol Skorupski is hereby dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 4550-88

AGENCY DKT. NO. 88-343

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,

v.

TRUMP PLAZA ASSOCIATES,
T/A TRUMP PLAZA HOTEL
AND CASINO; AND CAROL
SKORUPSKI, CAGE SECRETARY,
Respondent.

Christopher J. Pitts, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Roger S. Claus, Esq., General Counsel and **Brian D. Spector,** Esq. (Ribis, Verdon & Curtin, attorneys)

Record Closed: May 9, 1989 Decided: May 26, 1989

BEFORE **STEPHEN W. THOMPSON,** ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by the respondent. More specifically, the Division of Gaming Enforcement (Division) alleges violations of N.J.S.A. 5:12-101(b), N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.25(e) and N.J.A.C. 19:45-1.8(a)243.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 4, 1988. Respondents filed an Answer to the complaint on or about June 22, 1988. On July 6, 1988, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was scheduled for haring on October 21, 1988, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, 3rd floor, Atlantic City, New Jersey.

Prior to the hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the OAL on May 9, 1989. The record closed on May 9, 1989.

FINDINGS OF FACT AND CONCLUSION

The Division and respondents have prepared a Stipulation of Facts and Settlement Agreement (paragraphs 1-40, Stipulation of Facts and Settlement Agreement) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facs and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

3. The settlement fully disposes of all issues in controversy and and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested csae may settle the matter

by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the OAL. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the OAL be and are hereby concluded.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 26, 1989
DATE

Stephen W. Thompson/lm
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

5/30/89
DATE

Illegible
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 31 1989
DATE

Illegible/K.S.
OFFICE OF ADMINISTRATIVE LAW

lar

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By: Christopher J. Pitts
Deputy Attorney General

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General Counsel
Trump Plaza Associates
Boardwalk and Mississippi Avenue
Atlantic City, New Jersey 08401
Attorneys for Respondents

RECEIVED
STATE OF N.J.
OFFICE OF LAW
MAY 3 4 10 PM '89

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 04550-88
AGENCY DOCKET NO. 88-343

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

TRUMP PLAZA ASSOCIATES, t/a TRUMP PLAZA HOTEL and CASINO; and CAROL SKORUPSKI, Cage Secretary,

Respondents.

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Peter N. Perretti, Jr., Attorney General of New Jersey, attorney for Complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Christopher J. Pitts, Deputy Attorney General, and Brian D. Spector, Esquire, of Ribis, Graham, Verdon & Curtin, and Roger S. Claus, Esquire, General Counsel, Trump Plaza Associates, attorneys for Respondents Trump Plaza Associates and Carol Skorupski, and all matters raised in the Complaint having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

1. Respondent, Trump Plaza Associates, t/a Trump Plaza Hotel and Casino (hereinafter "Trump Plaza"), is now and at all times referenced herein has been a general partnership, organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at the Boardwalk and Mississippi Avenue in the City of Atlantic City and State of New Jersey.

2. Trump Plaza is now the holder of a casino license issued by the Commission authorizing Trump Plaza to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Trump Plaza effective on May 24, 1984, and last renewed effective May 16, 1988. Trump Plaza has been conducting its casino hotel operations pursuant to said license continually to date since that time, including all times referenced herein.

3. Trump Plaza is the holder of, and operates pursuant to, a Certificate of Operation effective May 11, 1984. Trump Plaza has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles Trump Plaza to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. On April 20, 1983, Respondent Carol Skorupski was issued a non-gaming related casino employee license, CCC License No. 44272-22, by the Casino Control Commission, (hereinafter "Commission"). Subsequently, on May 11, 1983, Respondent Skorupski was issued a gaming-related casino employee license, CCC License No. 44272-21, by the Commission. Gaming-related casino employee license #44272-21 was most recently renewed on November 26, 1986 for a period of three (3) years.

5. At all times referenced herein, Respondent Skorupski was employed by Trump Plaza and was assigned to the Casino Cage Department in the capacity of Cage Secretary.

6. In her position as Cage Secretary and subsequent to the issuance of her gaming related casino employee license, Respondent Carol Skorupski performed on occasion, those steps necessary to determine the validity of cash equivalents as required by N.J.A.C. 19:45-1.25(e). More specifically, Ms. Skorupski answered telephone inquiries of gaming patrons, some of whom requested to have the validity of a cash equivalent determined prior to their arrival at the casino.

7. Respondent Skorupski had been instructed by Trump Plaza as to the procedures to be followed when determining the validity of cash equivalents pursuant to N.J.A.C. 19:45-1.25(e). Specifically, Ms. Skorupski had been instructed to obtain the name of the patron wishing to have his cash equivalent verified and the amount of said cash equivalent, as well as the date and check number of the instrument. In addition, Ms. Skorupski was instructed to inquire as to the name and address of the issuing institution.

8. In those instances where the telephoning patron provided the telephone number of the issuing institution, as well as the information set forth at paragraph 7 of this Stipulation of Facts and Settlement Agreement (hereinafter "Stipulation"), supra, Respondent Skorupski was instructed to telephone the number provided by the patron and to inquire as to the validity of the cash equivalent. In such instances, Respondent Skorupski was also instructed to contact directory assistance to independently obtain the telephone number of the issuing institution, and if said telephone number was different from that provided by the patron, to telephone that number and again inquire as to the validity of the cash equivalent in question.

9. On July 6, 1987, at approximately 2:45 p.m., a man who represented his name to be Joseph Tominaro (hereinafter "Joseph Tominaro") telephoned Trump Plaza and spoke with Cage Secretary Carol Skorupski.

10. Pursuant to the telephone conversation referred to in paragraph 9 of this Stipulation, supra, Joseph Tominaro informed Ms. Skorupski that he would be arriving at Trump Plaza later that same day and that he would be bringing a certified check with him for gaming purposes. Joseph Tominaro provided Respondent Skorupski with information concerning the check so that the validity of said check could be determined prior to Mr. Tominaro's arrival at Trump Plaza. Specifically, Mr. Tominaro informed Ms. Skorupski that the check was numbered 2120, dated July 6, 1987, in the amount of $5,000 and payable to T.P.A [Trump Plaza Associates]. Joseph Tominaro also informed Ms. Skorupski that the check was drawn on account number 328-206-133-6 at the Bowery Savings Bank, 2154 86th Street, Brooklyn, New York.

11. In addition to the information described in paragraph 10 of this Stipulation, supra, Joseph Tominaro provided Ms. Skorupski with a telephone number, "(718)372-8623", and he represented that said number was that of the bank upon which the check was drawn. Joseph Tominaro also provided Ms. Skorupski with the name "Dave Levine" and represented to her that said person was the bank employee who should be contacted to determine the validity of the check. Joseph Tominaro represented to Ms. Skorupski that the telephone number was that of the Bowery Savings Bank, located at 2154 86th Street, Brooklyn, New York, and that the name he provided was that of the Accounts Manager of the Bowery Savings Bank.

12. The information provided by Joseph Tominaro to Ms. Skorupski during the telephone conversation of July 6, 1987, as

described in paragraphs 10 and 11 of this Stipulation, supra, was recorded by Ms. Skorupski on a page from Trump Plaza's Cash Equivalent Log. A copy of Trump Plaza's Cash Equivalent Log which contains the information relative to patron Joseph Tominaro is attached hereto as Exhibit A and made a part hereof.

13. Respondent Carol Skorupski telephoned the number provided by Mr. Tominaro at approximately 2:45 p.m. on July 6, 1987. A person representing himself to be "Dave Levine" answered the telephone and stated that he was the "Accounts Manager" of the Bowery Savings Bank and informed Ms. Skorupski that the check in question (hereinafter "check #2120") was "good".

14. Respondent Carol Skorupski documented the telephone conversation with "Dave Levine", as described in paragraph 13 of this Stipulation, supra, and noted that, per Dave Levine, check #2120 was "good". Ms. Skorupski signed her name, the date (July 6, 1987), and the time (2:45 p.m.) of her telephone conversation with "Dave Levine" on the Cash Equivalent Log that she had previously used to record the information she had received from Mr. Tominaro (See Exhibit A).

15. During the course of the investigation conducted by the Division of Gaming Enforcement (hereinafter "Division") regarding the subject matter of this Stipulation, Respondent Carol Skorupski represented to the Division that, upon completing her telephone inquiry to "(718)372-8623", she telephoned the Brooklyn, New York area directory assistance to obtain the listed telephone number of the Bowery Savings Bank upon which check #2120 was drawn. The

number obtained from directory assistance was (718)373-1919. Respondent Skorupski further represented that she then telephoned "(718)373-1919" and was again informed that check #2120 was "good".

16. On July 6, 1987, at approximately 8:10 p.m., Joseph Tominaro arrived at Trump Plaza and presented check #2120 to Trump Plaza's Casino Cage, specifically Cage Cashier Deborah Pettus, CCC License No. 05797-21. Said check was made payable to "T.P.A.", was signed by Joseph Tominaro and was dated July 6, 1987. The numbers "120" were printed in the upper right hand corner of the check. Directly to the left of the printed numbers, the number "2" was handwritten so that the check would appear to be numbered 2120 rather than 120. Said check had the name "Joseph Tominaro" printed in the upper left hand corner, with an address, 1867 W. 10th St. BKLYN, 11223 handwritten beneath said name. Handwritten adjacent to Mr. Tominaro's printed name was a telephone number, "(718)946-8087". In addition, check #2120 was stamped with the words "Certified Check". A copy of check #2120 is attached hereto as Exhibit B and made a part hereof.

17. Upon being presented with check #2120, Cage Cashier Deborah Pettus contacted Assistant Casino Cage Shift Supervisor Joanne Hogan, CCC License No. 28291-11, for the purpose of obtaining authorization for the acceptance of check #2120.

18. Upon being presented with check #2120, Casino Cage Shift Supervisor Joanne Hogan reviewed the Cash Equivalent Log form prepared by Respondent Carol Skorupski. Said form is more fully described at paragraphs 12 and 14 of this Stipulation, supra. Ms.

Hogan then compared the information contained on check #2120 with the information written by Carol Skorupski on Trump Plaza's Cash Equivalent Log form. (See Exhibit A) The purpose of said comparison was to confirm that the information contained on check #2120 corresponded to the information recorded by Ms. Skorupski on the Cash Equivalent Log form. After comparing the information, Ms. Hogan placed check #2120 on top of the upper middle portion of the Cash Equivalent Log form and then photocopied the two (2) documents. The resulting photocopy contained both a copy of Trump Plaza's Cash Equivalent Log form with a copy of check #2120 in the upper middle portion of said form. Ms. Hogan then placed both Cash Equivalent Log forms (one containing a copy of check #2120, one without a copy of the check) into Trump Plaza's Cash Equivalent Log. Trump Plaza's Cash Equivalent Log form with a copy of check #2120 in the upper middle portion of said form is attached hereto as Exhibit C and made a part hereof.

19. Based upon the information contained on the Cash Equivalent Log form prepared by Respondent Carol Skorupski, as well as the fact that the information on said form agreed with that contained on check #2120, Ms. Hogan authorized the acceptance of check #2120. As a result of that authorization, check #2120 was accepted by Cage Cashier Deborah Pettus.

20. Upon the acceptance of check # 2120, Mr. Tominaro informed Cage Cashier Deborah Pettus that he wished to place the funds represented by said check on safekeeping deposit with Trump Plaza. Mr. Tominaro then completed a safekeeping deposit

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application and the funds represented by check # 2120 were subsequently placed on safekeeping deposit with Trump Plaza. Said deposit is documented by Customer Deposit Receipt # 19997. A copy of the safekeeping deposit application signed by Mr. Tominaro as well as a copy of Customer Deposit Receipt # 19997 are attached hereto as Exhibits D and E respectively and made a part hereof.

21. On July 6, 1987, from approximately 8:15 p.m. until 10:20 p.m., the funds placed on safekeeping deposit by Joseph Tominaro were withdrawn by him in five (5) separate $1,000 increments.

22. Respondent Trump Plaza deposited check #2120 in its depository bank account on or about July 7, 1987.

23. Upon his arrival for work on July 7, 1987, Trump Plaza Assistant Cashier Manager Steve Capozzi, CCC License No. 01127-11, had occasion to review copies of several cash equivalents that had been presented at Trump Plaza on the previous gaming day. During his review, Mr. Capozzi examined a copy of check #2120, presented by Joseph Tominaro and recalled an entry that he had previously made in the Trump Plaza's Shift Supervisor's Log concerning patron Joseph Tominaro.

24. The Shift Supervisor's Log is utilized by Trump Plaza employees to communicate between shifts. Specifically, entries are made daily in the log in order to inform all shifts of potential problems that may occur. Casino Cage Shift Supervisors and Assistant Shift Supervisors are required to review the day's entries in the log, at the start of work each day.

25. Upon recalling his entry in Shift Supervisor's Log concerning patron Joseph Tominaro, Mr. Capozzi reviewed said log and retrieved the page containing his entry. Said entry was dated June 10, 1987, signed by Steve Capozzi and stated:

> A MAN USING THE NAME OF JOSEPH TOMINARO IS PASSING BAD CERTIFIED CHECKS. THEY ARE DRAWN ON THE BOWERY SAVINGS BANK IN NEW YORK USUALLY FOR $5,000. HE PROVIDES A PHONE NUMBER AND WHEN YOU CALL SOMEONE ANSWERS "BOWERY SAVINGS BANK". IF HE COMES IN CALL DGE IMMEDIATELY 645-6710 DET. GARIBICS. AS ALWAYS, YOU MUST OBTAIN PHONE NUMBERS OF BANKS THROUGH BANKING DIRECTORIES.

The page of Trump Plaza's Shift Supervisor's Log containing Mr. Capozzi's entry is attached hereto as Exhibit F and made a part hereof.

26. Check #2120 was returned unpaid to Trump Plaza on or about July 17, 1987, at which time Trump Plaza Assistant Cashier Manager Steve Capozzi prepared a memorandum regarding "Joseph Tominaro's $5,000 Certified Check." A copy of said memorandum is attached hereto as Exhibit G and made a part hereof.

27. During the course of the Division's investigation into the subject matter of this Stipulation, representatives of the Bowery Savings Bank, Brooklyn, New York informed the Division that check #2120, drawn on the account of Joseph Tominaro, was not, in fact, certified for payment by the Bowery Savings Bank. Additionally, representatives of the Bowery Savings Bank, Brooklyn, New York informed the Division that the account upon which check #2120 was drawn, account #328-206-133-6, had been closed in September of 1986.

28. During the course of the Division's investigation into the subject matter of this Stipulation, representatives of the Division consulted the Brooklyn, New York telephone directory in order to determine whether the telephone number provided by Mr. Tominaro, (718)372-8623, was in fact the telephone number of the Bowery Savings Bank. After reviewing said telephone directory, representatives of the Division learned that the telephone number provided by Mr. Tominaro, (718)372-8623, was issued to "F.T. Tominaro" whose address was listed as "1867 West 10th Street, Brooklyn, New York."

29. During the course of the Division's investigation into the subject matter of this Stipulation, representatives of the Bowery Savings Bank, Brooklyn, New York, informed the Division that there was no employee by the name of "Dave Levine" employed by the Bowery Savings Bank.

30. During the course of the Division's investigation into the subject matter of this Stipulation, the Division made several requests to Trump Plaza that it produce documentation regarding long-distance telephone calls placed from the casino cage for the month of July 1987.

31. Specifically, the Division requested that Respondent Trump Plaza produce copies of the telephone call accounting records for the month of July, 1987, in order to determine if a direct inquiry with the Bowery Savings Bank had, in fact, occurred prior to the acceptance of check #2120 on July 6, 1987. The telephone call accounting records requested by the Division were those

generated via a software system purchased by Trump Plaza from Bitek Corporation. Said telephone call accounting records identify the date, time, number dialed, and telephone extension for long distance calls, including those placed from the Casino Cage. Respondent Trump Plaza was unable to locate and therefore produce the requested telephone call accounting records.

32. On May 5, 1988, after completing its investigation into the subject matter of this Stipulation, supra, the Division filed a Complaint against the Respondents alleging violations of the Casino Control Act and Commission regulations.

33. Subsequent to the filing of the Division's complaint in this matter, Trump Plaza obtained a "WATS Detail Listing by Billing Account" from AT&T which reflects long-distance calls placed from, among other in-house locations, the casino cage and which covers the period including July 6, 1987. On September 19, 1988, Trump Plaza forwarded to the Division the "WATS Detail Listing By Billing Account" obtained from AT&T, along with affidavits detailing the steps followed to obtain said telephone listing. Attached hereto and made a part hereof as Exhibits H through K respectively, are pages 3806 and 3783 of the "WATS Detail Listing By Billing Account" (hereinafter "WATS detail listing"), along with affidavits of Roger S. Claus, General Counsel for Trump Plaza, and Elaine LoPresti, Communications Manager for Trump Plaza.

34. A review of the WATS detail listing obtained from AT&T, which is described in paragraph 33 of this Stipulation, supra, reveals that a telephone call to the number provided by Joseph

Tomina:o, (718)372-8623, was made on July 6, 1987, at 2:41 p.m. and lasted slightly longer than 1 minute (61 seconds). (See Exhibit H). Further review of the WATS detail listing reveals that a telephone call to the listed number of the Bowery Savings Bank, "(718)373-1919", was made on July 6, 1987, at 2:43 p.m. and lasted approximately 1.5 minutes (101 seconds). (See Exhibit I).

35. Respondent Trump Plaza acknowledges that because of the irregularities described in paragraph 16 of this Stipulation, supra, check #2120 should not have been accepted as a cash equivalent.

36. Respondent Trump Plaza acknowledges that it failed to locate and produce to the Division the Bitek telephone call accounting records for long-distance calls made during the month of July 1987, and that, under these circumstances, it failed to maintain these original books, records and documents pertaining to its operations and approved hotel on the site of the approved hotel building for a period of seven years.

37. By failing to locate and produce the Bitek telephone call accounting records for long-distance calls made during the month of July 1987, despite several Division requests, Respondent Trump Plaza acknowledges that said documents were not immediately available for inspection by agents of the Commission and Division during all hours of operation.

38. Subsequent to the filing of the Division's Complaint in this matter, Trump Plaza agreed to retain the telephone call accounting records generated by Trump Plaza through its call

accounting software system currently in use on magnetic media, thus insuring that such records will be kept immediately available for agents of the Commission and Division until approved for destruction by the Commission.

39. As part of the Division's investigation in the instant matter, sworn investigative interviews of Trump Plaza's Assistant Cashier Manager Steve Capozzi and Trump Plaza's Assistant Cage Supervisor Joanne Hogan were conducted on October 8, 1987. A transcript of the sworn investigative interviews of Steven Capozzi and Joanne Hogan is attached hereto as Exhibit L and made a part hereof.

40. As part of the Division's investigation in the instant matter, a sworn investigative interview of Respondent Carol Skorupski was conducted on February 17, 1988. A transcript of the sworn investigative interview of Respondent Carol Skorupski is attached hereto as Exhibit M and made a part hereof.

WHEREAS, the parties have endeavored to submit to the Commission a detailed submission of all material and relevant facts pertinent to the allegations contained in the Division's Complaint, Docket No. 88-343. Additionally, the parties submit for the purposes of this Stipulation various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, Respondent Trump Plaza Associates acknowledges that check #2120 should not have been accepted as a cash equivalent under the circumstances more fully described at paragraph 16 of

this Stipulation, and therefore TPA violated N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(e), and

WHEREAS, Respondent Trump Plaza Associates acknowledges that its failure to retain and produce telephone call accounting records regarding long-distance telephone calls violated N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)2 and 3, and

WHEREAS, Complainant, Division of Gaming Enforcement, agrees to the dismissal of the allegations concerning Respondent Carol Skorupski based upon the facts set forth at paragraphs 15, 33 and 34 of the Stipulation of Facts and Settlement Agreement, and

WHEREAS, all the allegations contained in the Division's Complaint in this matter are hereby resolved.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

A. Respondent Trump Plaza Associates agrees to pay the sum of $5,000 to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.S.A 5:12-96(e), N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.8(a)(2) and (3) and N.J.A.C. 19:45-1.25(e) in full and final settlement of the allegations set forth in Counts I and III of the Division's Complaint.

B. Count II of the Division's Complaint is dismissed.

Dated: 5/9/89

By: Christopher Pitts
Christopher Pitts
Deputy Attorney General
Attorney for Complainant
State of New Jersey
Department of Law & Public
Safety, Division of Gaming
Enforcement

Dated: 5/8/89

By: _____
Brian D. Spector, Esquire
Ribis, Graham, Verdon & Curtin
4 Headquarters Plaza
Morristown, New Jersey 07962-1991

Dated: 5/4/89

By: _____
Roger S. Claus, Esquire
General Counsel
Trump Plaza Associates
Boardwalk and Mississippi Avenue
Atlantic City, New Jersey 08401

lkg/010108/d

TABLE OF EXHIBITS

A. Trump Plaza's Cash Equivalent Log concerning check #2120.

B. Check #2120.

C. Trump Plaza's Cash Equivalent Log concerning check #2120. (with copy of check #2120 in upper middle portion).

D. Safekeeping Application concerning Patron Joseph Tominaro.

E. Customer Deposit Receipt #19997.

F. Page from Trump Plaza's Shift Supervisor's Log concerning patron Joseph Tominaro.

G. Steven Capozzi Memorandum to File, dated July 17, 1987.

H. Page 3806 of WATS Detail Listing By Billing Account.

I. Page 3783 of WATS Detail Listing By Billing Account.

J. Affidavit of Roger S. Claus, General Counsel, Trump Plaza Associates.

K. Affidavit of Elaine LoPresti, Communications Manager, Trump Plaza Associates.

L. Transcript of Sworn Investigative Interview of Joanne Hogan and Steven Capozzi, conducted on October 8, 1987.

M. Transcript of Sworn Investigative Interview of Respondent Carol Skorupski, conducted on February 17, 1988.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-104; 88-63
APPLICATION NO. 70993-22
REGISTRATION NO. 65914-40
OAL DOCKET NO. CCC 8215-88 AND
CCC 254-88 (ON REMAND)
ORDER NO. 89-27-14

APPLICATION OF DAVID VEGA
FOR A CASINO EMPLOYEE LICENSE

AND

ORDER

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

Complainant,

v.

DAVID VEGA,

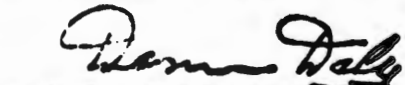
Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 5, 1989,

IT IS on this 24th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

FILED

MAY 24 1989

CASINO CONTROL COMMISSION
LEGAL DIVISION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8215-88
(On Remand CCC 254-88)
AGENCY DKT. NOS. 88-EA-104
and 88-63

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
DAVID VEGA,
Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

David Vega, respondent, pro se

Record Closed: April 7, 1989 Decided: May 23, 1989

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on September 1, 1987, seeking revocation of the respondent's casino hotel employee registration, pursuant to sections 86, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon his 1987 indictment for aggravated assault and resisting arrest, contrary to N.J.S.A. 2C:12-1(b)5 and N.J.S.A. 2C:29-2a(1). This matter also concerns the respondent's application for licensure as a casino employee, permitting him to work in a maintenance and cleaning capacity. By letter report to the Casino Control Commission dated November 30, 1987, the Division of Gaming Enforcement

objected to the licensure of the respondent, based upon the respondent's conviction for resisting arrest entered on September 17, 1987, as well as upon the respondent's record of other arrests and convictions. The Division specifically objected to the respondent's licensure based upon his conviction while in the United States Army on October 12, 1977, of an offense comparable to arson, contrary to N.J.S.A. 2C:17-1b.

A hearing on these consolidated matters was conducted on July 5, 1988, and an initial decision (OAL Dkt. No. CCC 254-88) was issued on August 22, 1988. The respondent subsequently filed with the Commission a motion for rehearing. The Commission considered the entire record of these proceedings at its public meeting of October 19, 1988. On November 2, 1988, the Commission ordered for good cause shown that this matter be remanded to the Office of Administrative Law for reopening of the record:

> . . . to allow the respondent to introduce evidence of rehabilitation, including but not limited to the 21 letters of recommendation which were attached to his moving papers and further to permit the Division to rebut such evidence.

PROCEDURAL HISTORY

By letter dated September 17, 1987, the respondent requested a hearing concerning the Division's complaint. The Casino Control Commission subsequently consolidated that matter with the respondent's application for a casino employee license. The consolidated matters were thereafter transmitted by the Commission to the Office of Administrative Law on January 11, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on April 11, 1988. At that time the issues to be resolved were identified. As noted above, I conducted a hearing on July 5, 1988, and an initial decision was issued on August 22, 1988. On November 2, 1988, the Commission ordered the matter remanded to the Office of Administrative Law for reopening of the record and the matter was transmitted on November 9, 1988. A prehearing conference was held on January 31, 1989, and the hearing on the remand was subsequently held on April 7, 1989. The record closed on that date.

FINDINGS OF FACT

The initial decision previously issued in this matter on August 22, 1988 (OAL Dkt. No. CCC 254-88) is incorporated herein by reference. The additional material facts are essentially undisputed. The respondent testified on his own behalf and he also presented numerous letters and documents, which were admitted into evidence as Exhibits R-1 through R-23.

Exhibits R-1 through R-18 are letters from employees of the Showboat Hotel and Casino. Fred Raines, manager of the Showboat Bowling Center, writes that the respondent is an outstanding employee and dedicated worker whose work habits are above reproach (Exhibit R-1). Public Area Supervisor Carolyn M. Spencer supervised the respondent for over a year and she found him to be hardworking, reliable and trustworthy (Exhibit R-2). Several administrative assistants who were familiar with the respondent's work as a porter cleaning the executive area attested to his hard work and honesty (Exhibits R-3 through R-7).

Numerous other individuals employed in office capacities at the Showboat Hotel and Casino wrote that the respondent is a fine worker upon whom they may always rely (Exhibits R-8 through R-18). These correspondents believe the respondent to be an honest and dedicated employee who is friendly and cooperative and whose trustworthiness is beyond question. Dozens of employees signed a letter drafted by Angie Evans, administrative assistant in the Showboat catering department (Exhibits R-19, 20 and 21). These letters describe the respondent as a personable hard worker who is very responsible and reliable. According to the respondent, some of the writers who attested to his good character and honesty are familiar with his background. (The respondent's background is fully set forth in the initial decision incorporated herein by reference.)

The respondent also testified concerning events which have taken place since the original hearing in July 1988. On October 4, 1988, the respondent's two-year probation for his conviction for resisting arrest was terminated one year early (Exhibit R-23). His conduct while under probationary supervision had been satisfactory and he had completed all conditions of his probation. The respondent testified candidly that the same day, he left his employment with the Showboat by walking out without giving notice. He explained that he left because he was

drinking even heavier than before and he did not want the people there to see him "going down."

The respondent testified that he stopped drinking the day before Thanksgiving, 1988. He entered an alcohol rehabilitation program at the Parkside Lodge of New Jersey, where he was treated from December 1 until December 29, 1988 (Exhibit R-22). The respondent attends Alcoholics Anonymous meetings three times a week and counselling sessions once a week. At the counselling, the participants discuss their problems and how they are to control themselves and deal with their problems. The respondent explained that he is learning how to be patient and to not let his anger build by keeping his problems to himself. According to the respondent's sincere testimony, he learns something different every time. He now accepts that he has made mistakes because of his drinking and that alcohol was controlling him.

The respondent stated that he was receiving disability from November 1988 until January 1989. On January 10, 1989, the respondent was hospitalized for appendicitis. Since March 3, 1989, the respondent has been receiving unemployment benefits. He has arranged to begin culinary classes as soon as the class size is sufficient. He now spends his time with people who are sober and that has made a big difference for him. The respondent noted that he has had no further trouble with the law since his last problem in 1987.

All of the preceding evidence is essentially undisputed and is thus additionally **FOUND AS FACT**.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to the Commission's order of November 2, 1988, this matter was remanded to the Office of Administrative Law and the record was reopened to allow the respondent to introduce evidence of rehabilitation and to permit the Division to rebut such evidence. Analysis of the applicable sections of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) is fully set forth in the previously issued initial decision which is incorporated herein by reference. In brief, I concluded in that initial decision that the respondent had been convicted of an offense comparable to arson in the third degree, contrary to N.J.S.A. 2C:17-1b, which is an automatic disqualifier under section 86c(1) of the Casino Control Act.

There follows in the original initial decision analysis of whether or not the respondent had established his rehabilitation pursuant to sections 90h and 91d of the act and the factors to be considered are set forth therein. In concluding that the respondent had failed to establish his rehabilitation by clear and convincing evidence, I noted at that time:

> The respondent is now 35 years old. He is employed by a licensed casino in its cleaning and maintenance department. His duties include cleaning the executive offices.
>
> The petitioner's (sic) offense comparable to arson occurred in 1977, when the respondent was 24 years old. The offense was serious, endangering the lives of other soldiers at Fort Hood and damaging government property. The respondent had been drinking when he committed the offense, which was a manifestation of his anger toward his superiors.
>
> The respondent has a lengthy arrest record. Many of the offenses were correctly related to the respondent's drinking problem. In addition, the offenses demonstrate the respondent's propensity toward violence. His three arrests in New Jersey in 1987 all involved violent conduct and resulted in convictions for simple assault, disorderly conduct and resisting arrest. The latest of these offenses occurred little more than one year ago and the respondent remains on probation as a result of his guilty plea to the charge of resisting arrest, contrary to N.J.S.A. 2C:29-2a(1).
>
> It is undisputed that the respondent's drinking problem contributed to his most recent offense. However, the respondent feels he can control his anger when he is sober and he has cut down on his drinking. His employer has identified a positive change in the respondent since his last arrest on June 15, 1987.
>
> . . .
>
> Of the respondent's last three convictions which occurred in 1987, two involved violent behavior within licensed casino facilities. This recent criminal conduct by a casino hotel employee registrant is adverse to the public confidence and trust in the regulatory process. The respondent testified candidly and sincerely concerning his many offenses. While he is making earnest efforts to control his drinking problem, he has not established by clear and convincing evidence that he will no longer commit violent offenses such as the three which he has committed within the past year. . . .

Several changes have occurred since issuance of the original initial decision in August 1988. The respondent no longer works at the Showboat Casino and Hotel. He left there without giving notice because he did not want his fellow employees to see that the was having a drinking problem. The respondent then entered and

satisfactorily completed an alcohol rehabilitation program. He is attending several alcoholic anonymous meetings per week and is also attending weekly counselling sessions. In addition, the respondent's progress on probation was satisfactory and his two-year term of probation for his resisting arrest conviction in 1987 was ended a year early. The respondent also produced numerous letters from his former co-workers which attest to his hard work and honesty.

The respondent was a very sincere, candid and believable witness on his own behalf. His testimony was impressive and moving. The respondent has not had an easy time, but he continues to work hard to keep his drinking problem under control. Nearly a year has passed since the original hearing and the respondent has still avoided any further legal problems. I am convinced that his rehabilitative effort have been successful. Therefore, I **CONCLUDE** that the respondent who has been convicted of an offense which would be a disqualifier under section 86c(1) of the Casino Control Act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h and 91d of the Casino Control Act.

Based upon the foregoing discussion, I further **CONCLUDE** that the respondent's conviction upon a plea of guilty to resisting arrest, contrary to N.J.S.A. 2C:29-2(a) in September 1987 does not indicate that his licensure and continued registration would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the act. On the basis of the undisputed facts in this matter, I further **CONCLUDE** that the respondent has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of section 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against David Vega be dismissed. It is further **ORDERED** that the application of David Vega for a casino employee license permitting him to work in a maintenance and cleaning capacity is **GRANTED**.

OAL DKT. NO. CCC 8215-88

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 23, 1989
DATE

Joseph F. Fidler by JFF
JOSEPH F. FIDLER, ALJ

Agency Receipt:

5/24/89
DATE

[signature]
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 through P-17	See Initial Decision, OAL Dkt. No. CCC 254-88

For the respondent:

R-1	Letter from Fred Raines dated September 30, 1988
R-2	Letter from Carolyn Spencer dated September 30, 1988
R-3	Letter from Vogl, Berenotto, and McCabe dated October 3, 1988
R-4	Letter from Kimberly Faulkner dated September 30, 1988
R-5	Letter from Verna Pine dated September 28, 1988
R-6	Letter from Agnes Philen dated September 28, 1988
R-7	Letter from Toni Drummond dated September 30, 1988
R-8	Letter from Richard Price dated September 29, 1988
R-9	Letter from Shari Reese dated September 29, 1988
R-10	Letter from Elga Mazier dated September 30, 1988
R-11	Letter from Sharon Smith dated October 3, 1988
R-12	Letter from Darleen Blocker dated September 29, 1988
R-13	Letter from Eunice Echevarria dated September 30, 1988
R-14	Letter from Palma Kunkel dated October 3, 1988

R-15	Letter from Paul Brutschea dated October 1, 1988
R-16	Letter from Florita Staten dated September 29, 1988
R-17	Letter from Melie-Marie Armour dated September 30, 1988
R-18	Letter from Stacy Foster dated September 30, 1988
R-19	Group letter dated September 28, 1988
R-20	Group letter dated September 28, 1988
R-21	Group letter dated September 28, 1988
R-22	Verification of Treatment of Parkside Lodge
R-23	Termination of Probation dated October 1988

WITNESSES

For the petitioner:

OAL Dkt. No. CCC 254-88

Richard Clark
David Vega

OAL Dkt. No. CCC 8215-88

None

For the respondent:

OAL Dkt. No. CCC 254-88

Jack Mason

OAL Dkt. No. CCC 8215-88

David Vega

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-363
LICENSE NO. 046218-21
REGISTRATION NO. 045877-40
OAL DOCKET NO. CCC 2965-89
ORDER NO. 89-47-14

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ORDER

TICH VAN VO,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Division of Gaming Enforcement (DGE) having filed exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of November 29, 1989,

IT IS on this 6th day of December 1989, ORDERED that the initial decision of the Office of Administrative Law is modified as follows:

> The casino employee license of Tich Van Vo expired subsequent to the filing of this complaint. To qualify for a casino employee license, Mr. Vo is required to submit a completed application form which will be investigated by the DGE and processed by the Commission in due course,

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR



BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2965-89

AGENCY DKT. NO. 83-363

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
TICH VAN VO,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Tich Van Vo, respondent, pro se (Spring Cook, Interpreter, pursuant to N.J.A.C. 1:1-14.3)

Record Closed: August 25, 1989 **Decided: October 6, 1989**

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint on October 18, 1983, with the Casino Control Commission (Commission) seeking, among other things, to revoke the casino employee license and the casino hotel employee registration of respondent Tich Van Vo based upon respondent's arrest and charge of conspiracy, in violation of N.J.S.A. 2C:5-2 and with cheating at blackjack in violation of N.J.S.A. 5:12-113.

The matter was transmitted from the Commission to the Office of Administrative Law (OAL) on April 18, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 13, 1989, where respondent was accompanied by an English speaking friend, Stephen J. Walker, who advised respondent as to the proceedings. A plenary hearing was held on August 25, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was closed on that date.

ISSUES

The issues agreed upon to be determined by this tribunal at the prehearing conference are as follows:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(2) despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: a violation of N.J.S.A. 5:12-113 cheating at blackjack and conspiracy to cheat at blackjack in violation of N.J.S.A. 2C:5-2?

B. Whether respondent's continued licensure and/or registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 5:12-113 and N.J.S.A. 2C:5-2, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

C. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

D. Whether respondent may demonstrate rehabilitation pursuant to section 90h and/or 91d of the Casino Control Act?

FINDINGS OF FACT

Having considered the entire record in this matter, including testimonial and documentary evidence proffered by the parties, and having given fair weight thereto; I **FIND** the following **FACTS** in this matter:

Respondent is a native of Vietnam who fled his homeland at the end of the Vietnam "conflict" to emigrate to the United States of America. Respondent is presently employed as a cook at the Trump Plaza Hotel and Casino and as a relief

cook at Harrah's Hotel and Casino under his casino hotel employee registration no. 45877 40. Respondent presently holds casino employee license no. 46218-21 (blackjack dealer) issued by the Commission on August 3, 1983.

On October 2, 1983, respondent gambled at the Tropicana Hotel and Casino with his friend and roommate, Dung Duc Nguyen a native Vietnamese. On October 2, 1983, respondent was employed as a porter at Resorts International Hotel and Casino. During the early evening of October 2, 1983, respondent lost approximately $900 at the gaming tables. He asked his friend Dung Duc Nguyen for a loan and Nguyen lent respondent about $500. Respondent continued to play and won approximately $1,800. Subsequently, respondent and Nguyen met and played blackjack at the table of dealer Ba Van Tran, a native of Vietnam and acquaintance of both respondent and Nguyen. Tran had rented respondent's former residence and had visited respondent and Nguyen in their then living quarters. Respondent won approximately $300 after playing blackjack at dealer Tran's table for a period of 15 minutes.

At approximately 6:30 p.m. on October 2, 1983, respondent, Nguyen and Tran were arrested by the New Jersey State Police and charged with Conspiracy pursuant to N.J.S.A. 2C:5-2 and Cheating at Blackjack pursuant to N.J.S.A. 5:12-113. Dealer Tran admitted to the State Police that he revealed or "flashed" the down card in the dealing shoe to his friends before drawing the card from the shoe for play. Respondent admitted at the hearing that he had seen some of the flashed cards revealed to him by Tran. Respondent did not admit, however, that his observation of the flashed or exposed card affected or changed his wager while playing at Tran's blackjack table. At the time of his arrest, respondent had on his person a total of $2,575 in Tropicana value gaming cheques (P-1).

Respondent, who was 32 years of age, was not formally indicted on the charges of Conspiracy and Cheating at Blackjack. Rather, respondent was the subject of a criminal complaint and subsequently admitted into the Atlantic County Pretrial Intervention Program (PTI). Respondent successfully completed his PTI on November 26, 1984 and the charges against him were dismissed.

The testimony demonstrates that respondent has continued to gamble at the Atlantic City casinos subsequents of 1983-1984. In 1985, respondent gambled on a regular periodic basis notwithstanding his licensure as a casino employee.

FACTS IN DISPUTE

Respondent offered conflicting and contradictory testimony at the hearing with regard to whether or not he observed the flashed down cards before it was offered into play by dealer Tran. He testified, through his interpreter, that he had seen some of the revealed cards while also denying that he had seen flashed cards in other portions of his testimony. Respondent's conflicting testimony may be attributed to his lack of understanding and comprehension of English and/or the confusion over the definition of the card to be dealt from the dealing shoe; variously identified as the hole/hold card or down card. In any event, he adamantly denied that the revealed down cards benefited him in his play at Tran's blackjack table.

DISCUSSION AND CONCLUSIONS

UNPROSECUTED CRIMINAL ACTS, PURSUANT TO SECTION 86g OF THE ACT

The Division contends that respondent committed two disqualifying offenses; i.e., conspiracy to cheat at blackjack in violation of N.J.S.A. 2C:5-2 and, cheating at blackjack in violation of N.J.S.A. 5:12-113. Neither charge was brought to trial or prosecuted by a court of competent jurisdiction. The Division, however, relies on section 86(g) of the Act which provides the Commission with the authority to deny a casino license to an applicant based on "the commission...of any act...which would constitute any offense under subsection c (of section 86), even if such conduct has not or may not be prosecuted under the criminal laws of this State..." Offenses pursuant to N.J.S.A. 2C:5-2 is a disqualifying offense under section 86c of the Act.

The Division has presented direct and circumstantial evidence with respect to the two charges. The evidence shows that respondent was acquainted with dealer Tran prior to October 2, 1983. In fact, Tran had visited respondent's place of residence more than once prior to the October 2, 1983 events. The facts also demonstrate that respondent played at dealer Tran's blackjack table for

approximately 15 minutes on October 2, 1983 and walked away with $300 in winnings. The hearsay evidence (P-1) shows that dealer Tran flashed the down card to respondent and others prior to drawing the card from the dealing shoe and placing the card in play. Respondent admits and denies observing the down card in the dealing shoe prior to the card being placed into play.

The proofs clearly demonstrate that respondent, his friend Nguyen and Tran knew each other prior to October 2, 1983. The proofs also show that respondent saw some of the revealed cards by Tran. However, despite Tran's hearsay admission, there was no proof presented that respondent and Tran entered into a conspiracy to cheat at blackjack. Even if Tran's hearsay admission is accepted as true, it only shows that Tran was attempting to give his friends an edge over the odds at the gaming table; not that he entered into a conspiracy with respondent or Nguyen to commit the offense of cheating at blackjack within the meaning of N.J.S.A. 2C:5-2.

Similarly, the Division's proofs are circumstantial concerning respondent's win at Tran's blackjack table. Notwithstanding the fact that respondent won $300 in approximately 15 minutes, the facts also demonstrate that respondent also won approximately $1,800 after losing $900 and borrowing $500 from Nguyen. Respondent adamantly denies that his observation of the revealed or flashed cards altered his play or worked to his benefit.

I **CONCLUDE**, therefore, that the Division has failed to prove, by a preponderance of the credible evidence, that respondent entered into a conspiracy or that he did, in fact, cheat at blackjack. N.J.S.A. 2C:5-2; N.J.S.A. 5:12-113.

SECTION 86c(2), "INIMICAL CLAUSE"

The statutory provision at N.J.S.A. 5:12-86c (2) is commonly referred to as the "inimical clause" of the Casino Control Act (Act). The standards by which section 86c (2) are to be applied in individual cases where a determination is to be made as to whether an offense is inimical to the purposes and policies of the Act were set forth by the Commission in In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission No. 79-CL-1, (February 26, 1979), where it said at 15:

> ...The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Appellate Division of Superior Court has held that "inimical," with regards to the casino industry, means "adverse to the policy of the Act and gaming operation." In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div. July 11, 1985, A-993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17).

In Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985), the Commission determined that those enumerated factors found in sections 90h and 91d, known as the rehabilitation provisions of the Act to overcome disqualification for licensure or registration as a consequence a criminal conviction, are subsumed in the inimical analysis. Id. at 314.

Having determined that the Division failed to establish that respondent had, in fact, committed offenses which would disqualify him from licensure and registration, I, therefore, **CONCLUDE** that respondent's continued licensure and registration would not be inimical to the policies of the Act nor to the integrity of the casino industry. Accordingly, the inimical analysis is unnecessary here and shall not be recited.

GOOD CHARACTER, HONESTY AND INTEGRITY PURSUANT TO SECTION 89b (2) OF THE ACT

The Division alleges that respondent lacks the requisite good character, honesty and integrity to possess a casino license. N.J.S.A. 89B(2) provides, in pertinent part, that:

> **Each applicant for a casino ... employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity...**

In accordance with section 89b (2), the burden of proof lies with respondent by the standard of clear and convincing evidence. This standard of proof was articulated by the Commission in its decision in In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at pp. 5-6 where it said:

> **...The clear and convincing evidence requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt, clear and convincing evidence should produce in the mind of the (fact finder) a firm belief or conviction as to the truth of the matters sought to be established....**

In the instant matter, respondent successfully completed his PTI program and returned to work as a cook in the casino industry under his casino hotel registration. Respondent has, by way of letters from individuals in the casino industry, shown that he is dedicated, trustworthy and responsible toward his job and loyal to his employer. He is known to be an honest person in his dealings with others and an honorable man in general. There has been no evidence produced to the contrary.

I **CONCLUDE**, therefore, that respondent has established his good character, honesty and integrity by clear and convincing evidence as required by section 89b(2) of the Act.

I further **CONCLUDE** that in the absence of a finding of culpability for the charges advanced by the Division, there is no need to address the issue of rehabilitation, pursuant to sections 90h and 91d of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that the charges advanced by the Division against respondent be and are hereby **DISMISSED.**

It is further **ORDERED** that the Division's recommendation that respondent Tich Van Vo's casino employee license and casino hotel employee registration be revoked is hereby **DENIED** and **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the **CASINO CONTROL COMMISSION** does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6 October 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

10/12/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 12 1989
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Tich Van Vo
Jack Thorpe, State Police Officer

For the Respondent:

Tich Van Vo
Philip R. Cook
William B. Howery

EXHIBIT LIST

For the Petitioner:

P-1 N.J. State Police Report, dated October 2, 1983

For the Respondent:

R-1 Letter from Chef Gordon Greenlee, Trump Plaza, dated August 21, 1989
R-2 Letter from Chuck Robinson, Night Chef, Trump Plaza, dated August 17, 1989
R-3 Letter from Jorn Schulz, Executive Chef, Harrah's Marina, dated August 2, 1989
R-4 Letter from Glenn D. Albright, Executive Sous Chef, Harrah's Marina, dated August 22, 1989
R-5 Letter from Jack O'Donnell and Jonathan Benanav, Trump Plaza, dated March 23, 1989
R-6 Letter from Stephen J. Walker, dated August 18, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-305; 89-297
APPLICATION NO. 72125-21
REGISTRATION NO. 71368-40
OAL DOCKET NOS. CCC 1152-89; 2526-89
ORDER NO. 89-41-22

APPLICATION OF DMYTRO J. WAC
FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

Complainant,

v.

DMYTRO J. WAC,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 18, 1989,

IT IS on this 19th day of October 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 89-41-22

IT IS FURTHER ORDERED that Dmytro J. Wac is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 1152-89
AND CCC 2526-89
(CONSOLIDATED)
AGENCY DKT. NOS. 89-EA-305
AND 89-297

DMYTRO J. WAC,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Dmytro J. Wac, petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 12, 1989 Decided: August 28, 1989

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This contested case concerns two consolidated matters. The first is the application of Dmytro Wac (petitioner) for licensure as a casino employee, which would permit his employment in a licensed casino as a craps dealer. By letter report to the Casino Control Commission dated December 28, 1988, the Division of Gaming Enforcement objected to the petitioner's licensure, based in part upon the petitioner's alleged conviction in July 1985 of theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7. The second matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on March 30, 1989, seeking revocation of the respondent's casino hotel employee registration.

These are the issues:

1. Has the petitioner been convicted of theft by receiving stolen property in the third degree, contrary to N.J.S.A. 2C:20-7, which would be a disqualifier from licensure and from continued casino hotel employee registration, pursuant to sections 86c(1), 90e and 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Has the petitioner, if he has been convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.

3. Has the petitioner failed to reveal material facts and supplied untrue or misleading information pertaining to the qualification criteria, and if so, is he disqualified pursuant to section 86b of the act.

4. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

The respondent's request for a hearing on his license application was received by the Casino Control Commission on February 7, 1989. On February 8, 1989, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The Division's complaint seeking revocation of the petitioner's casino hotel employee registration was filed with the Casino Control Commission on March 30, 1989. The Commission transmitted the second matter to the Office of Administrative Law on April 6, 1989, for consolidation with the earlier transmitted matter.

A telephone prehearing conference was held on April 11, 1989. A hearing on the consolidated matters was thereafter held on June 22, 1989, in Atlantic City, New Jersey. I subsequently determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on July 12, 1989.

FINDINGS OF FACT

The material facts are essentially undisputed. The petitioner is 27 years old and he resides with his mother in Pleasantville, New Jersey. The petitioner holds casino hotel employee registration no. 71368-40.

At the time of the hearing, the petitioner expected that he would soon begin employment at Resorts International Hotel and Casino as a bar porter. According to the petitioner, that would be his first employment since his termination from the Trump Plaza Hotel and Casino in March 1989. The petitioner had begun employment at Trump's in the summer of 1988 as a bar helper. The petitioner stated that he was terminated from Trump's following an argument with his supervisors (Exhibits R-16 and R-17). The petitioner also worked at Caesars Boardwalk Regency Hotel and Casino as a bar porter between November 1986 and June 1988. He stated that Caesars would not accept him back following his leave resulting from execution of a warrant.

The petitioner's arrest and conviction record is undisputed. The petitioner was first arrested on July 9, 1983, by the Sea Isle City Police and charged with conspiracy to distribute a controlled dangerous substance after arranging with an undercover officer for a narcotics buy (Exhibit R-1). The petitioner was subsequently indicted in Cape May County on several drug charges (Exhibit R-2). In February 1984 the petitioner was admitted in the Pre-Trial Intervention Program. However, an order terminating him from the program was filed in November 1984.

In December 1984 the petitioner entered a plea of guilty on one count of conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 24:21-24. The petitioner was sentenced to probation for one year and fined $350. The remaining counts of the indictment were dismissed. In October 1985, the petitioner was charged with violation of his probation and when he failed to appear, a bench warrant was issued. In November 1985 the bench warrant was rescinded and the probation was extended for an additional year. An order terminating the petitioner's probation on this conviction was entered in January 1987 (Exhibit R-3).

While the previous charge was pending, the petitioner was arrested on September 11, 1984, by the Moorestown Police and charged with possession of cocaine and marijuana and consumption of alcohol in a motor vehicle (Exhibits R-4, 5

and 6). On February 12, 1985, the petitioner was found guilty on all three charges and was ordered to pay fines totalling $450, together with costs totalling $65 and payments to the Violent Crimes Compensation Board totalling $50 (Exhibit R-5).

While the above matters were pending, the petitioner was arrested on November 17, 1984, by the Atlantic City Police and charged with theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7 (Exhibits R-7 and R-8). On January 22, 1985, the petitioner was indicted in Atlantic County on one count of theft by receiving stolen property valued in excess of $500. The goods in question were various items of stereo equipment. On July 10, 1985, the petitioner entered a plea of guilty to the indictment (Exhibit R-10). On August 16, 1985, he was sentenced to the Atlantic County Jail for 45 days with credit for 21 days served and a probationary period of two years. The petitioner was also fined $350 which was to be payable during the first year of probation.

The petitioner's last arrest occurred on April 30, 1985, when he was charged by the Deptford Township Police Department with theft by failure to make required disposition of property, contrary to N.J.S.A. 2C:20-9a (Exhibit R-1). This charge involved the petitioner's failure to return a rented vehicle valued at approximately $4,500. A one count indictment on this charge was subsequently entered in the Superior Court for Gloucester County (Exhibit R-12). In December 1986, a warrant was issued for the petitioner's arrest for his failure to appear on the indictment (Exhibit R-13). This warrant was executed in June 1988. However, on November 28, 1988, the indictment was dismissed in Superior Court on motion of the Gloucester County Prosecutor (Exhibit P-1).

The petitioner filed a Personal History Disclosure Form 4A with the Casino Control Commission in November 1986 (Exhibit R-14). In large letters at the top of page 4 is a notice to the applicant for registration: "important -- failure to answer any question on this form completely and truthfully will result in the revocation of your registration." On page 8, the form requires disclosure of an applicant's arrest or charge, even if not convicted, of any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense other than a traffic violation. In response to this question, the petitioner did not reveal any of his arrests or charges.

In April 1987, the petitioner filed a Personal History Disclosure Form 2A with the Casino Control Commission (Exhibit R-15). Question no. 16 of the form requires disclosure of an applicant's record of arrests or charges, exactly as the previous form

described above. Once again, the petitioner failed to disclose any of his record of arrests or charges.

Division of Gaming Enforcement Investigator Alexander J. Love testified at the hearing that he reviewed both of the petitioner's disclosure forms and performed his own criminal arrest record check. Investigator Love found that the petitioner had the four arrests described above, but that none of them had been disclosed on either of the disclosure forms. Investigator Love interviewed the petitioner by telephone on January 22 and February 8, 1988. According to the investigator, he read question no. 16 to the petitioner and afforded him an opportunity to respond.

The petitioner gave a limited response. The first time he was asked to disclose his record, he revealed only his Sea Isle City arrest. Investigator Love again read the petitioner question no. 16 and asked him if he recalled any other arrests. After a few minutes, the petitioner revealed his arrest in Moorestown. Investigator Love again asked if there were any other arrests. After a pause, the petitioner revealed his Atlantic City arrest. When asked if there were any others, the petitioner said no. Investigator Love later confronted the petitioner with the Deptford arrest and the petitioner then admitted it. The petitioner was asked why he had not disclosed his arrests. He told Investigator Love that he had forgotten about the Moorestown arrest and that he did not disclose the Deptford arrest because he had not gone to court on it and had forgotten it. Investigator Love added that at the time of this interview, there was an active bench warrant for the petitioner's arrest on the Deptford charge.

The petitioner was also asked why he did not disclose the Sea Isle City and Atlantic City charges. The petitioner told him that he had talked to friends about these and had received their advice. He was told by his friends not to disclose these matters because they could hurt his chances for receiving a license.

Testifying on his own behalf, the petitioner stated that he agreed with everything that Investigator Love had said. The petitioner also stated that he agreed with the contents of all of the documents which had been admitted into evidence. The petitioner also offered an explanation as to why bench warrants had been issued from time to time when he had failed to appear for court proceedings. He stated that he did not appear in court because he was afraid of what was going to happen to him and he chose not to go.

It was the petitioner's testimony that he completed his disclosure forms on his own. However, he did receive advice from friends that he should not disclose his arrests because he would not be able to get a license. The petitioner stated at the hearing that he decided to not disclose any of his arrests because he felt that disclosure might prevent him from getting a license. The petitioner also acknowledged that when he filled out his application for employment at Trump Plaza (Exhibit R-18), he did not disclose his arrests and convictions on the form or orally because he thought that he would not be hired if he did.

The petitioner testified that he now knows that he should have disclosed everything, instead of listening to his friends. He had nothing to add concerning the circumstances of any of his arrests or convictions. The petitioner noted that there was no community service requirement for his probationary term. He did not complete 12th grade and he has received no job training. The petitioner also candidly acknowledged that he has not participated in any counselling sessions, nor has he had any involvement in any community organizations. The petitioner stated simply that he would like to be given a chance and he wants to put his past behind him.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2) and 90b of the act, an applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(1), the Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure.

Participation in casino operations as a licensee or registrant under the Casino Control Act is deemed to be revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the act to preclude the creation of any property right in any

license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the act.

Section 86b provides for disqualification for failure to provide information, documentation and assurances required by the act or requested by the Commission, or for failure 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. In this matter, it is undisputed that the petitioner failed to disclose any of his record of arrests on his Personal History Disclosure Forms. He was not forthcoming with this information when interviewed by the Division's investigator. He admitted his arrest record to the investigator only after repeated requests for the information. In addition to failing to disclose this information on his two Personal History Disclosure Forms, the petitioner subsequently failed to disclose his arrest record on his application for employment at the Trump Plaza Casino Hotel.

The petitioner's arrest and conviction record is certainly important to an evaluation of his qualifications. Thus, these are material facts within the meaning of section 86b. This should be clear because the Commission expressly requires disclosure of this information. However, not every failure to provide material information should be deemed a disqualifying event. It should be determined whether the failure was willful or evinced a conscious disregard for the regulatory system. A merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant disqualification. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Dkt. No. 79-CL-1 (1979). In this matter, the petitioner's explanation for failure to make full disclosure on his Personal History Disclosure Forms revealed his intent. That intent was to hide important information from the Commission in order to improve his chances of obtaining a casino employee license. The petitioner had a similar motivation when he failed to disclose his record of arrests and convictions to Trumps Plaza, since he feared that he would not be hired if he did make disclosure.

Based upon the foregoing, I **CONCLUDE** that the petitioner's failure to make full disclosure of his arrest and conviction record on his Personal History Disclosure Forms was not merely inadvertent or ignorant, but rather, it evinced a conscious disregard for the regulatory system. Therefore, I **CONCLUDE** that the petitioner has

failed to disclose material facts and is thus disqualified from licensure and continued registration, pursuant to sections 86b, 90e and 91b of the act.

In July 1985, the petitioner was convicted upon his plea of guilty to a charge of theft by receiving stolen property in the third degree, contrary to N.J.S.A. 2C:20-7. This is an offense specifically listed under section 86c(1) of the act as a disqualifier. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his conviction of a disqualifying offense.

Section 91d of the act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his conviction of an offense identified in the act as a disqualifier, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the respondent shall not be denied a casino employee license on the basis of his otherwise disqualifying conviction, provided that he has affirmatively demonstrated his rehabilitation pursuant to section 90h of the act. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h (the language of section 91d is almost identical) shall be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense or conduct;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, 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.

The petitioner is now 27 year old. His first arrest occurred when he was 21. His last arrest occurred in June 1988 on a warrant issued for his failure to appear concerning a 1985 charge in Deptford Township. The underlying indictment was eventually dismissed.

The petitioner's conduct involved serious criminal matters, including conspiracy to distribute a controlled dangerous substance and theft by receiving stolen property. As a hotel registrant, he has worked as a bar porter and helper. If he were to obtain licensure, the petitioner would seek employment on the casino floor as a craps dealer. His criminal conduct has a negative impact on his qualifications for these positions.

The petitioner's education is limited. He has not received vocational schooling, nor has he attended counselling sessions. He has not performed any community service and he is not a member of any community organization. In addition to these circumstances, the petitioner did not disclose his arrest and conviction record in his Personal History Disclosure Forms filed with the Casino Control Commission.

The petitioner's failure to fully disclose his arrest and conviction record constitutes significant evidence that he has not achieved rehabilitation following his disqualifying conviction. In light of the conclusion that the petitioner is disqualified from licensure and continued registration pursuant to section 86b of the act as a result of his failure to disclose material facts, I must further **CONCLUDE** that the petitioner has failed to establish his rehabilitation by clear and convincing evidence, within the meaning sections 90h and 91d of the act. Based upon all of the foregoing, I also **CONCLUDE** that the petitioner has failed to establish his good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Dmytro J. Wac be revoked. It is further **ORDERED** that the application of Dmytro J. Wac for a casino employee license permitting him to work in a licensed casino as a craps dealer be **DENIED**.

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This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

August 28, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8/29/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 31 1989
Date

Elizabeth Johnson
OFFICE OF ADMINISTRATIVE LAW

jz

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Order for Dismissal of Indictment

For the respondent:

R-1 Sea Isle City Arrest Report

R-2 Cape May County Indictment

R-3 Cape May County Criminal Record

R-4 Moorestown Investigation Report

R-5 Moorestown Arrest Report

R-6 Moorestown Complaint and Warrant

R-7 Atlantic City Arrest Report

R-8 Atlantic City Investigation Report

R-9 Atlantic County Indictment

R-10 Atlantic County Judgment of Conviction

R-11 Deptford Investigation Report

R-12 Gloucester County Indictment

R-13 Arrest Warrant

R-14 Personal History Disclosure Form 4A

R-15 Personal History Disclosure Form 2A

R-16 Trump Plaza Notice of Unsatisfactory Performance

R-17 Trump Plaza Notice of Discharge

R-18 Trump Plaza Employment Application

WITNESSES

For the petiitoner:

Dmytro J. Wac

For the respondent:

Alexander J. Love
Dmytro J. Wac

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-75; 88-EA-76;
88-EA-77
APPLICATION NOS. 00132-95; 00135-95;
00131-95
OAL DOCKET NO. CCC 1096-89
ORDER NO. 89-37-25

APPLICATION OF PAUL WAITZE, ARTHUR BLOCK AND STANLEY R. GREENBERG FOR JUNKET REPRESENTATIVE LICENSES — ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 13, 1989,

IT IS on this 20th day of September 1989, ORDERED that the initial decision is modified as follows:

> to note that section 89(b)(2) of the Casino Control Act has been amended to delete the reference to "reputation for" in connection with an applicant's affirmative burden of establishing good character, honesty and integrity (L. 1987, c. 354).

ORDER NO. 89-37-25

IT IS FURTHER ORDERED that the applications are granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1096-89
AGENCY DKT. NOS. 88-EA-75,
88-EA-76, 88-EA-77

PAUL WAITZE, ARTHUR BLOCK,
AND STANLEY R. GREENBERG,
Petitioners,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Jack Feinberg, Esq., for the petitioners (Mairone, Biel, Gould, Zlotnick, Feinberg and Griffith, attorneys)

Frederick J. McDonough, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: June 30, 1989 Decided: July 28, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioners, Paul Waitze, Arthur Block, and Stanley R. Greenberg, applied to the Casino Control Commission (Commission) for the issuance of casino junket representative licenses, pursuant to N.J.S.A. 5:12-102. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the licenses by reason of its contention that the petitioners lacked the requisite good character, honesty and integrity, pursuant to section 102b, which incorporates section 89b(2) by reference.

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PROCEDURAL HISTORY

The petitioners filed with the Commission an application for the issuance of a casino junket representative licenses so they could operate junkets to Atlantic City casinos. By letter to the Commission, dated September 18, 1987, the Division objected to the petitioners' application for licensure as junket representatives, asserting that the petitioners had engaged in the renting of gaming equipment to charitable and fraternal organizations in the Boston area for use in fund-raising events known variously as "Las Vegas Nights" or "Monte Carlo Nights." Such events, although legal in Massachusetts, must comply with certain statutory requirements. The Division alleged that the petitioners had violated several state statutes respecting the conduct of certain Las Vegas Nights. Specifically, a complaint filed by the Massachusetts Attorney General alleged that the petitioners:

(1) had promoted and/or operated such events;

(2) had provided dealers or operators for such events;

(3) had contacted charitable or fraternal organizations and offered a specified amount of money for the use of the organization's name as the advertised sponsor of the event, when in fact the event was primarily conducted by the defendants for their profit;

(4) had promoted Las Vegas Nights by distributing promotional calendars that listed when and where such events would be staged without mentioning the sponsoring organization; had advertised such events in newspapers without, at times, including the sponsor's name;

(5) had regularly reserved, and paid deposits for, rooms in which such events were to be held;

(6) had participated or assisted in the conduct of such events; and

(7) had operated such events where the amount of the cash awarded exceeded the legal limit.

The civil action brought against the petitioners' concluded in October, 1986 with the entry of a Final Judgment by Consent, whereby the defendants, without admitting or denying the facts alleged in the complaint, consented to the entry of a permanent injunction that enjoins them from violating Massachusetts law. Based upon this alleged misconduct, the civil complaint, and the consent judgment, the Division asserts that the petitioners lack the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 102b, which incorporates section 89b(2) by reference. Based upon the

report, the Commission notified the petitioners on November 18, 1987, that there was a "substantial possibility" that their applications would be denied and that they had the right to a hearing. By application dated November 24, 1987, which was received by the Commission, the petitioners requested a hearing. As these applications were originally filed before the January 14, 1988 amendments to the Casino Control Act, they were originally investigated at the casino employee standard. Subsequent to the enactment of the 1988 amendments, the Divison requested that the case be withdrawn so it could investigate the applications at the casino key employee standard. This request for withdrawal was granted by the Commission. By letter to the Commission, dated January 20, 1989, the Division reported that its new investigation failed to disclose any new derogatory information, and the Division renewed its objection contained in its letter report of September 18, 1987. By application dated February 2, 1989, which was received by the Commission on February 6, 1989, the petitioners requested a hearing. On February 8, 1989, the Commission transmitted the matter to the Office of Administrative Law, which was received on February 14, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before me on March 21, 1989. The issue set forth at the prehearing conference to be resolved at the hearing was:

A. Whether the petitioners possess the requisite good character, honesty and integrity for casino junket representative licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-102b.

A hearing was held June 29 & 30, 1989, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

(A) The Investigation

In Massachusetts, it is legal for charitable organizations to sponsor gambling activities in order to raise funds. It is also legal for companies to rent gambling equipment to charitable organizations for their use. In 1984, the Commonwealth of Massachusetts (Commonwealth) conducted an investigation into the activities of Atlantic

Vegas Rentals (AVR). AVR was a company which rented gambling equipment to charitable organizations. A complaint was made that AVR was running numerous events in the South Boston area, and that they were professional games being run for profit and not for charity, and that employees of AVR were dealing games.

In Massachusetts, only the members of the sponsoring organization who have been members for three months may deal and the payoffs and bets are limited to $25. The member in charge must have been a member of the organization for three years. The equipment owners may only supply, set up, and take down the equipment.

As part of an undercover investigation, two state investigators attended a Las Vegas night at Lantana's banquet facility. AVR supplied the equipment for this event. Newspaper ads identified the sponsoring organization as the Norwood Sons of Italy while the marquee at the event identified the sponsor as the Canton Softball League. The agents watched the dealers and looked to see if they could observe any violations. The agents noticed that the sponsoring organization had not posted rules and a membership list as it was required to do. After several hours the agents departed and reported their activity to the lead investigator, Investigator McHugh, the next day.

On February 14, 1986, investigators again attended a Las Vegas night at Lantana's. The newspaper ads identified the sponsor as the Canton Jaycees; however, the marquee at the door identified the sponsor as Canton Softball. Again, AVR supplied the equipment. The investigators made mental notes of the dealers and looked for violations. At the end of the evening, the investigators observed three dealers enter their cars, recorded their license plate numbers, and subsequently identified them as Messrs. Basterville, Vocelli, and Luzinski.

On February 28, 1986, the investigators again attended a Las Vegas night at Lantana's. The event was being sponsored by the Norwood Sons of Italy. After observing the dealers for approximately 20 minutes, Investigator McHugh asked to speak with the member in charge, Carmello Galley. Investigator McHugh questioned Mr. Galley regarding the Sons of Italy and reviewed their gaming permit. Mr. Galley did not have a posted membership list as required. Mr. Galley indicated that they had rented the equipment from AVR, that this was the third time his organization had done so, that AVR set up the equipment, and that Messrs. Block, Waitze and Greenberg would begin dealing until replacements from his organization arrived.

Investigator McHugh then interviewed approximately 15 dealers. Some were members of the Sons of Italy and some were not. Paul Waitze was interviewed and indicated that he was the equipment supplier, helped setup and contacted Lantana's for the room. He admitted dealing for about five or ten minutes in order to relieve an organization dealer so he could use the restroom and so the game would not have to be shut down.

Various fliers advertising Las Vegas nights were introduced into evidence (R-2b, e, f, R-3 & R-4). None of these advertisements list the name of the sponsor. AVR distributed calendars indicating upcoming Las Vegas nights (R-2c & d). These calendars also do not indicate the events sponsor.

The sponsoring organization is responsible for the operation of Las Vegas nights. Only it can promote a Las Vegas night and only its members can operate the games. The sponsoring organization is also responsible for maintaining the requisite documents on the site, and the person renting the room must be a member of the organization.

The sponsoring organization is also responsible for reporting all of the proceeds from a Las Vegas night to the Commonwealth. The sponsoring organization is responsible for maintaining an accounting of all of the proceeds and expenses incurred from a Las Vegas night. The investigators conducting this investigation did not review any of the financial reports filed by any of the sponsoring organizations involved in this case. The investigators have no idea how much money was received or who received the money. Investigator McHugh conceded that it was quite possible that the sponsoring organizations received all of the money.

Richard A. Barnes of the Randolph Police Department testified that he was the police officer on duty at Lantana's on February 28, 1986. In Massachusetts, lounges and Las Vegas nights have police details assigned to them for security. The sponsoring organizaion arranges for the police detail and is responsible for paying for the detail. After being assigned to the detail for February 28, 1986, Officer Barnes first called Lantana's and received verification that the event was booked. None of the petitoners called to book the detail. When Officer Barnes arrived he checked the sponsoring organizations gambling permit. The permit listed three responsible members of the organization. It did not list any of the petitioners. AVR was one of only two companies

and at that time was a primarily supplier of the gambling equipment to charitable organizations in the Randolf area.

AVR did, for a short period of time, print calendars of future events (ie. R-2c & d) which were left at the entrance table to events. They were not circulated to the general public. This was done as a service to renters and patrons and there was no additional charge for that. Patrons had inquired as to when the next event was going to be held so AVR printed the calendars to inform patrons of upcoming events. The sponsoring organizations, however, were not indicated on the calendar.

AVR, through Mr. Waitze, did contact Lantana's and request that rooms be held for specific organizations. Lantana's is a popular, centrally located and well lit banquet facility that had rooms large enough to accommodate a Las Vegas night. Sponsoring organizations would contact Mr. Waitze and indicate what month they would like to sponsor an event. Mr. Waitze would then contact Lantana's and inquire as to room availability and request a room be held for a particular organization. Mr. Waitze would then contact the sponsoring organization, inform them of the available dates, and it was then the sponsoring organizations responsibility to go to Lantana's and sign a contract for the use of the room for that night. It was the sponsoring organization and not AVR that was financially responsible for the room. Mr. Waitze would only contact Lantana's after a sponsoring organization contacted him and requested information regarding available dates. AVR never contacted Lantana's first, arranged for a room, and looked for a sponsoring organization. AVR merely asked for the room to be held as a service to the sponsoring organizaiton so the date would not be taken by another organization prior to the sponsoring organization being able to get to Lantana's to sign a formal contract.

The petitioners resolved the complaint by entering into a final judgment by consent. The petitioners did not admit or deny the facts alleged in the complaint, and the petitioners consented to be enjoined from:

a) Providing dealers and/or operators for Las Vegas/Casino/ Monte Carlo Nights or other similar "bazaars" as defined by G.L. c.271 §7A, to organizaitons which are authorized to conduct such events by that statute.

b) Advestising or otherwise representing to anyone that dealers and/or operators will be available to provide their services to any organizations conducting Las Vegas/Casino/Monte Carlo Nights or other similar "bazaars" as defined by G.L. c.271, §7A.

c) Providing or offering to provide any persons to assist in any way in the operation, conduct or promotion of any Las Vegas/Casino/Monte Carlo Nights or any game of chance, incidental thereto or other similar "bazaars" as defined by G.L. c.271, §7A.

d) Providing and/or distributing promotional flyers or complimentary tickets for Las Vegas/Casino/Monte Carlo Nights or other similar "bazaars" as defined by G.L. c.271 §7A, conducted by organizations authorized to operate and promote such events under G.L. c. 271, §7A or providing and/or distributing such material (R-5).

The petitioners further consented to submit all contracts for the supply of gaming equipment to the Attorney General's office for a period of five years. Finally, the petitioners agreed to pay the Commonwealth its costs in investigating the case of $15,000 (R-5). No civil penalties or fines were imposed.

(B) Arthur Block

Arthur Block presently works for Compureck Systems Inc., a computer systems company. From 1957 through 1978, he operated a taxicab fleet in Boston. In 1978, he sold most of the fleet, but continued to operate a few cabs. He has been licensed by the Boston Police Department as a taxicab owner/operator for 32 years. He is also licensed to carry a firearm. Every two years he is required to undergo a background check when his permit is renewed.

Mr. Block is also a part owner of PGA Tours. This company operates tour junkets to Nassau, Las Vegas and the Caribbean. As part of operating tours to Las Vegas, Mr. Block is licensed as a junket representative by the Nevada Gaming Commission.

Mr. Block is extremely active in the Knights of Pythias, a charitable/fraternal organization. Mr. Block is a member of two local lodges and was the founder of one. He is a past chancellor (president) of both lodges. From 1970 through 1976, he was a state officer. He is also a past grand chancellor for the Commonwealth of Massachusetts (past state president). He has been a national officer since 1982. He is presently the supreme prelate (a national officer), and in three years he will be the supreme chancellor (national president). As part of his charitable endeavors, Mr. Block is active in the Kiddie Camp Corporation, a corporation that sponsors a summer camp for underprivileged children. He has helped raise money for and donated a computer to the Canton Hospital School, a state

school. He is involved with the Pythian Olympics for handicapped children in various hospitals. He helps organize the events, cooks, and even gets into a wheelchair to play baseball and basketball with the children. As part of the state's grand lodge charity, he is very involved in completely furnishing and equipping an entire wing of the New England Sinai Hospital.

Mr. Block is also a member of the Canton Town Club, Masons, Scottish Rite Consistory and Shrine. In his local lodge, he is a co-founder and a trustee of the Paul Stern Scholarship Fund. This fund provides a $1,000 scholarship every year to a deserving local high school graduate. Mr. Block is also a member of the Jewish War Veterans Association. He has also been involved as a volunteer in his local little league and men's softball league. He has also volunteered to assist in local town functions, celebrations and events.

According to Mr. Block, AVR was formed because the Grand Lodge of the Knights of Pythias and subordinate lodges would sponsor Las Vegas nights in order to raise funds for their charitable endeavors. Since the Grand Lodge could not store the equipment, and instead of paying other companies to rent the equipment, a group of lodge brothers decided to form their own company in order to rent or donate the equipment to charitable organizations. AVR was a part-time business, and Mr. Block was a stock holder. AVR would supply the equipment for the event and provide training for the sponsoring organizations members in the use of the equipment. AVR leased the equipment on either a flat per unit or package basis and never received a percentage of the profits. AVR never ran a Las Vegas night for its own benefit. AVR did not seek out, recommend or supply dealers to sponsoring organizations.

Mr. Block has dealt on occasions when AVR donated its equipment to the Knights of Pythias Lodge or for the Paul Stern Scholarship Fund. It was his understanding that if AVR donated the equipment that he was permitted to deal at the event. Mr. Block never arranged for a room, paid for a room, or arranged for advertising. The sponsoring organization was responsible for paying for the room.

Mr. Block orginally owned 17 percent of the AVR stock, and he subsequently obtained 8 percent more. As a stockholder he was a member of the board of AVR. Anyone of the owners could conduct business for AVR. Mr. Block received inquiries regarding equipment rentals, arranged for meetings, informed potential sponsors of the

costs, number of members needed to operate an event, training sessions, and discussed the law regarding permits or bingo licenses. All of the members of AVR would help set up various events.

Mr. Block admitted that for a short period of time, AVR did provide calendars of upcoming events. He indicated that he did not know it was contrary to regulations to provide such calendars, and if he had known, he would not have voted for it. It was done as a serivce. When they learned it was contrary to regulation to distribute such calendars, they immediately stopped providing them. AVR did not print or distribute any other form of advertising or fliers advertising Las Vegas night events.

Mr. Block did help set up the equipment on February 28, 1986. Mr. Block, however, did not stay that night. Mr. Waitze stayed at the event. Usually one or two AVR representatives would stay at an event in case the equipment needed to be serviced. Mr. Block did not deal on that night. He departed just before the event was opened to the public at approximately 7 p.m. Mrs. Jane Greenberg was also there that night and helped setup; however, Mrs. Greenberg is not a gambler and does not know the rules of the game. She merely helped setup and take down the equipment.

(C) Stanley Greenberg

Mr. Greenberg is married and has two daughter's. He is a graduate of Roxbury High School and the New England College of Pharmacy. He is a licensed registered pharmacist at Sedell's Pharmacy. As a registered pharmacist, he participates in continuing education programs in order to maintain his license. As a licensed registered pharmacist, Mr. Greenberg was required to pass a board examination and must renew his license every two years. In order to maintain his license he must remain crime free as he is responsible for controlled dangerous substances and prescription medications. He has not been involved in any adverse actions or noncompliance actions.

Mr. Greenberg was orginally employed by Mayco Drugs, he worked there for a number of years. Mayco Drugs was purchased by CVS Pharmacy and Mr. Greenberg worked there for two and one-half years. Mr. Greenberg felt that CVS emphasized quantity instead of quality, felt burnout coming, so he left CVS for Sedell's, a more local pharmacy with less pressure and more community involvement.

Mr. Greenberg is also a partner in PGA Tours.

Mr. Greenberg is active in his local community. He is active in the Young Men's Hebrew Association and the National Association of Retail Druggists. He has been the director of the pee-wee division of the local little league. He did this to help his community. (He has two daughters, neither of whom participated in little league). He is also a volunteer pharmacist at the New England Hospital and Sinai Rehabilitation Center.

Mr. Greenberg is also active in the Knights of Pythias, although not to the same extent as Messrs. Block and Waitze. He is a charter member of the Canton Lodge and is a past chancellor (president) of his local lodge. He is also a member of the Dramatic Order of the Knights Khorasann, an organization related to the Knights of Pythias. Mr. Greenberg is active in the Knight's charitable endeavors. He has organized flea markets for scholarship funds and has helped in campaigns for the Massachusetts Hospital School.

For approximately ten years he and his family have hosted and housed Rotary Club foreign exchange students in their home. He has provided a home for between eight and twelve foreign exchange students over the years. Sometimes their stays would overlap, and he would house two to three exchange students at one time. As part of becoming a host family, they were required to undergo a background check for suitability.

Mr. Greenberg was involved with AVR (or its predecessor KPA) from its inception. Mr. Greenberg was an original stockholder and member of the board. He helped organize AVR so the Knights of Pythias could benefit by operating Las Vegas nights as charitable fund-raisers. Approximately nine individuals formed the company. Two year laters, two individuals dropped out, and the remaining stockholders shares were increased proportionally. At that time, Mr. Greenberg decided that his pharmacy business demanded more of his time so he transferred his shares of AVR to his wife and thereafter only occasionally assisted in setting up equipment. In addition, as an owner of the equipment, Mr. Greenberg thought that he could not deal even when his own lodge was the sponsoring organizaiton, so he gave up his involement with the AVR so he could help his lodge.

Mrs. Greenberg was the clerk of AVR. She would also help setup the equipment. Mrs. Greenberg, however, does not gamble, does not know the rules of the game, and has never dealt.

Mr. Greenberg never dealt at events where AVR rented equipment. He knew it was improper to deal at events where they rented equipment. He does not know of anyone else from AVR who dealt at an event where AVR rented the equipment. Mr. Greenberg did deal at events for the Paul Stern Scholarship Fund where AVR donated the equipment. Mr. Greenberg never recommended or supplied dealers to other organizations and never supplied dealers for his home lodge. Mr. Greenberg did, susbsequent to the investigation, become aware that Mr. Waitze admitted that he had dealt at Lantana's for five or ten minutes on February 28, 1986, in order to fill in for a sponsoring organization dealer who was taking a break.

Mr. Greenberg has no recollection of being present at Lantana's on February 28, 1986. He also testified that neither he nor AVR ever circulated fliers or advertising about Las Vegas nights. AVR never promoted Las Vegas nights. He admitted that AVR did produce the calendars of upcoming events; however, they were left on the table at the entrance and were not "distributed." Mr. Greenberg did occasionally see fliers placed at the table by other organizations.

To the best of his knowledge, AVR never charged a percentage for the use of its equipment. AVR merely received its rental fees. The charities received 100 percent of the proceeds from the events. The rental fees were determined by a schedule based upon a cost per table or on a package price. AVR never contacted charitable organizations and solicited to use their name for a fee in order to sponsor Las Vegas nights.

Mr. Greenberg was not aware that AVR had ever reserved a room for any sponsoring organization, and he had not done so. As a result of the Massachusetts Attorney General's investigation, Mr. Greenberg learned that AVR had requested Lanatna's to hold dates for organizations who thereafter entered into contracts with Lantana's. At the time, Mr. Greenberg did not think AVR's actions were wrong.

There was some negative publicity regarding the case when the investigation was revealed. The investigation and the publicity bothered the Greenbergs. They had a daughter in school, Mrs. Greenberg was a school teacher, and Mr. Greenberg was a pharmacist. Their friends stayed away from them, and even though they did not believe they had done anything criminal, they wanted to put the incident behind them. As a result of the complaint, there was pressure upon Mrs. Greenberg because of her teaching

position in the community and they wanted to resolve the issue. As a result, they accepted the settlement. They did not think the settlement would have any negative impact on them. They were only required to pay the costs of the investigation and agree to comply with the law. There was no admission of liability nor any civil fine or penalty imposed.

(D) Paul Waitze

Paul Waitze is married and has two daughters, ages 28 and 23, and one son, age 26. Mr. Waitze graduated from the University of Rhode Island in 1959 with a Bachelor of Science in economics. He was then commissioned in the United States Army through the Reserve Officer Training Corps. He served two years and five months on active duty, and then served five and one-half years in the active reserve. He was honorably discharged from the Quartermaster Corps with the rank of captain.

From 1962 to 1983, Mr. Waitze worked for Tri-State Transport, Inc., a Massashusetts trucking firm. During this time, Mr. Waitze was licensed as an I.C.C. Common Carrier and by the Commonwealth of Massachusetts. Since that time, he has been the owner and operator of Waco Storage Trailers, a company that rents trailers for storage at construction sites. Mr. Waitze is also the general manager of PGA Tours. Mr. Waitze has been organizing junkets for four years, and he personally leads one junket every month. He is licensed as a junket representative by the Nevada Gaming Commission and he has a junket representative license pending in the Bahamas.[1]

Mr. Waitze is also very active in his community. He is a member of the Masons, the Canton Town Club, B'Nai Brith, the Jewish War Veteran's Association, and his local temple. He was an assistant coach in the Sharon Little league for three years and assisted in the Sharon Youth Hockey Club for six years. He is also a member of the American Legion.

Mr. Waitze has also been very active in the Knights of Pythias. For six years he was an officer in his local lodge culminating in his selection as chancellor (president).

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1 The Bahamian government is awaiting the New Jersey Casino Control Commission's final decision in this case before taking final action on Mr. Waitze's Bahamian license application.

Four or five years later he became a state officer, and he served as such for six years. He is also a past grand chancellor for the Commonwealth of Massachusetts (past state president). He is now going through the chairs again as a local lodge officer.

Through his involvement in the Knights of Pythias, Mr. Waitze is a member of the board of directors of Handi-Kids, a theraputic camp for severly retarded and handicapped children. Mr. Waitze is very active in this organization and attends regular monthly meetings of the board.

Again through his involvement with the Knights of Pythias, Mr. Waitze is a member of the board of directors of New England Sinai Hospital. He has been active in raising substantial funds to build and furnish a new rehabilitation wing of the hospital.

Mr. Waitze is also one of the original founders of the Paul Stern Scholarship Fund.

Mr. Waitze has deep feelings regarding these causes and is very active in fund raising for these organizations. He believes that fund raising efforts must be successful for Sinai Hopsital, Handi-Kids, and the scholarship fund to succeed. In order for him to be successful in soliciting funds, his reputation has to be unblemished.

In 1980, Mr. Waitze helped organize KP Associates (KPA). This was the predecessor to AVR. KPA was not related to the Knights of Pythias but it was being confused with the Knights of Pythias so the owners changed the name to AVR. This occurred when the shareholders changed. AVR had no specific office but listed the home phone numbers of Mssrs. Block, Greenberg and Waitze and AVR had a telephone in Mr. Waitze's office at the trucking company and then at Waco. Mr. Waitze was more involved in the operation of AVR simply because he had more time to devote it to than the other owners.

As indicated above, Mr. Waitze did reserve rooms for sponsoring organizations as a service to them. He did not, however, sign any contracts to reserve the room. That was the obligation of the sponsoring organization. Mr. Waitze was told by Lantana's that other gaming equipment rental companies followed these same procedures, so Mr. Waitze did not think he was doing anything wrong by merely asking that a room be held until a sponsoring organization could sign a contract with the facility.

Mr. Waitze admitted that AVR did for a short period of time provide calendars of upcoming events (R-2c & d). He state that as he would set up or break down events, people would ask him when the next event was going to be held. AVR therefore printed a list of upcoming events and left them on the table at the entrance to events. Mr. Waitze did not realize that this was a regulatory violation.

AVR did not produce or distribute fliers advertising upcoming events (R-2b, e, or f). These were left by various sponsoring organizations. AVR had no control over the distribution of these fliers. Only the sponsoring organization could control their distribution.

AVR did not produce advertisements for newspapers. Mr. Waitze works in Quincy and many organizations advertise in the Quincy newspaper. Mr. Waitze did on occasion drop off an advertisement at the newspaper on behalf of a sponsoring organization. He did not, however, produce or pay for the advertisement.

AVR never supplied or recommened dealers or workers. AVR could not deal at events where it was leasing the equipment. Mr. Waitze admitted that on occasion, including February 28, 1986, he did step in and relieve a sponsoring organization dealer for five or ten minutes to allow the person a break to use the restroom. Mr. Waitze did not think about what he was doing. Organizations usually did not have enough relief at craps tables and craps tables were usually crowded. Rather than shut down a table for ten minutes and possibly create a commotion, Mr. Waitze would relieve the dealer and keep the game operating. Mr. Waitze did deal on occasion that AVR donated the use of its equipment to sponsoring organizations of which he was a member (i.e., Knights of Pythias). Mr. Waitze never saw either Messrs. Greenberg or Block deal; Mrs. Greenberg has never dealt, and AVR never supplied dealers until the sponsoring organizations dealers arrived in order to enable the sponsoring organization to open on time. That was not AVR's responsibility.

AVR only controlled the setup, repair, and breakdown of the equipment and the training of sponsoring organization dealers. It was not responsible for the lists of members, workers, or funds. AVR only received its rentals for the equipment: either on a per table or package deal basis. AVR never received a percentage of the proceeds and never paid an organization to use its name. AVR never received the proceeds from an event and never ran an event for the benefit of AVR.

When the charges were made by the Commonwealth, there was negative newspaper publicity concerning the petitioners. There were allegations that the games were being run for personal gain and that AVR was just using the names of organizations. Mr. Waitze was uncomfortable dealing with customers. Remarks were being made to Mrs. Greenberg, a teacher in an elementary school. Stanley Greenberg was having problems at work. Remarks were being made to Mr. Waitze's daughter about him. When the settlement offer was made, Mr. Waitze felt it was best to accept the settlement agreement and put the incident behind them rather than to fight the charges. The expense of fighting the charges far exceeded the reimbursement of the Commonwealth for its investigation expenses. The remaining requirements were merely to file their contracts with the Attorney General and abide by the laws. AVR was being told they had violated the gaming regulations by publishing the calendars and reserving dates for rooms, and AVR had thought all along that its actions were proper. All during the investigation, AVR was never approached by the Commonwealth and told that they were operating events improperly. Mr. Waitze felt that to preserve his good character, it would be best to stop the negative publicity so he decided to settle the case. He felt that even if he went to trial on the charges and was found not guilty, the negative publicity of the trial would still harm him. AVR continued to operate for approximately nine months after the consent judgment was entered into, and then the company was sold.

(E) Character References

Five character references traveled from Massachusetts to speak on behalf of the petitioners. Dr. Edward P. Marran, director of Geo Centers, a research firm doing bio-tech, chemical agents, nuclear weapon and fibre optics research for the government, testified that he has known all three petitioners for a number of years. He testified to Mr. Waitze's involvement in Handi-Kids and the Knights of Pythias. He characterized Mr. Waitze as a concerned father and a good provider who is trustworthy, of high integrity and honest. He further testified that he had heard nothing negative in the community conerning Messrs. Greenberg and Block.

Michael Godes, a certified public accountant, tesified that he has known Messrs. Greenberg and Waitze for 38 years and Mr. Block for 20 years. He attended school with the first two, is the accountant for PGA Tours, and is a state officer of the Knights of Pythias. He described all three petitioners' involvement in the Knights of Pythias and their charitable endeavors. He attended two Las Vegas nights run by AVR

when AVR donated its equipment to benefit a scholarship fund. He described the three individuals as having the utmost integrity and believes the allegations filed by the Commonwealth are absurd. He has never heard anything negative regarding the petitioners and does not believe any of them has committed a dishonest or untruthful act.

Michael Flatto is another certified public accountant. He also has known all three petitoners for a number of years. He described their involvement in the Knights of Pythias, the barbecues and special olympics run for handicapped children, their work at Jaycees and other town functions, and their involvement in the Paul Stern Scholarship Fund. He described the petitioners as having excellent conduct. He believes that people cannot rise to the positions these individuals have held without the support and recognition of their peers. This demonstrates the communities respect for these individuals, and they would not have been elected if they did not have good character and integrity. The petitioners helped Mr. Flatto's local lodge raise $20,000 for the Stoughton Association for Exceptional Citizens. This organization aids families of children with deformities or diseases. Mr. Flatto has been involved in Las Vegas nights where AVR supplied the equipment. All dealers were members of his lodge, AVR merely supplied the equipment, and they were charged a flat rental rate. All profits from the evening went to charity.

Bernard Coffey is the Chief of Police in Sharon, Massachusetts. All three petitioners have lived in Sharon and he knows all of them. According to Chief Coffey, all three petitioners are considered strong, good citizens of the community. He has heard nothing derogatory regarding any of them. He was aware of the complaint filed by the Commonwealth against AVR; however, he and other members of the community thought it was a mistake made by the state. Chief Coffey issued the gun permit to Mr. Block, and he is aware of the criminal background check concerning Mr. Block. There is no adverse information in the report, and Chief Coffey believes Mr. Block to be a good citizen.

Martin Callinan is a taxi owner in Boston. He has known Mr. Block for 18 years in the taxi business. Mr. Block established the Taxi Industry Scholarship Fund. He actively solicited donations for this fund and helped raise money for it. Mr. Block was the director of the Independent Taxi Operators Association. He established a 20 percent discount program for senior citizens funded by the taxi industry. Mr. Callinan believes Mr. Block to be an honest and truthful individual who is held in high regard in his community.

In addition to the live testimony, the petitioners submitted two letters in their behalf. The first, written by Charles F. Yaitanes, selectman, board of selectmen, town of Stoughton, dated June 23, 1989, concerns Mr. Waitze. Selectman Yaitanes wrote:

> I hasten to heartily recommend Paul B. Waitze for a junket representative license. I have known Paul for over twenty (20) years, and I find him to be a fine family man with three children.
>
> He is well respected in the community. He is a successful businessman in the Town of Stoughton. Any consideration given to him will be greatly appreciate (P-4).

The second letter, written by Cabot Devoll III, senior vice president of the United States Trust Company in Braintree Massachusetts, wrote on behalf of all three petitioners. Mr. Devoll is treasurer of the Canton Men's Softball League. This league would hold Las Vegas nights to raise funds, and they have rented equipment from AVR. Mr. Devoll wrote that the petitioners:

> along with their helpers, would deliver the equipment, (tables, games, chips, etc.) set everything up; instruct our members on how to deal and operate the games prior to the event being opened to the public and then, at the end of the evening, take the equipment down and away from the premises.
>
> The dealers were members of our organization and Block, Waitze and Greenberg were not otherwise involved in the operation of the event other than as stated above.
>
> Because of the attendant publicity arising from the Massachusetts Attorney General's investigation of Atlantic Vegas Rentals, we decided to no longer rent equipment from them (P-5).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and their current good character, honesty and integrity, it is necessary to assess their credibility. Initially, their position in this matter must be recognized. As the petitioners and the applicants for casino employee junket representative licenses, they have a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of their testimony, the manner in which they participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioners testified truthfully in every regard. They were extremely sincere and credible witnesses. They are hard working, honest individuals who give a great deal of

their time to help those less fortunate. Accordingly, I am persuaded to accept the petitioners testimony in all respects.

I **FIND** all of the above as **FACT** except for the representation of Mr. Galley that Messrs. Block, Waitze and Greenberg would begin dealing until replacements from his organization arrived.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> ....
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference

> from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-102, Junkets and complimentary services,provides in pertinent part:

> a. No junkets may be organized or permitted except in accordance with the provisions of this act. No person may act as a junket representative or junket enterprise except in accordance with this section. . . .
>
> b. A junket representative shall be licensed as a casino key employee in accordance with the provisions of P.L. 1977 c. 110 (C. 5:12-1 et seq.); provided, however, that said licensee need not be a resident of this State. Any person who holds a current and valid casino key employee license may act as a junket representative while employed by a casino licensee without further endorsement of his license. No casino licensee or junket enterprise may employ or otherwise engage a junket representative who is not so licensed.

DISCUSSION

The Division contends, by means of section 102b, which incorporates section 89b(2) by reference, that the petitioners lack the necessary good character, honesty, and integrity required for junket representative licensure.

N.J.S.A. 5:12-102b

Under section 102b, which incorporates section 89b(2) by reference, the petitioners were required to establish, by clear and convincing evidence, their reputation for good character, honesty and integrity. In In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979), the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

The most serious charges contained in the Commonwealth's complaint are totally insubstantiated. There is absolutely no evidence in the record that AVR ever conducted Las Vegas nights for their own benefit. There is absolutely no evidence in the record that AVR ever received a percentage of the profits from gaming events. There is absolutely no evidence in the record that AVR ever paid charitable organizations to use the name as the advertised sponsor of a Las Vegas night event, when the event was primarily conducted by the petitioners for their own profit. There is absolutely no evidence in the record that the proceeds from the gaming events did not go to bona fide charities or the named sponsors.

There are several minor technical violations established. AVR did have printed promotional calendars indicating the location of future Las Vegas nights without indicating the sponsoring organizations. Mr. Waitze did on occasion deal games in order to temporarily relieve sponsoring organization dealers. AVR did not, however, systematically or regularly supply or recommend dealers to sponsoring organizations. Also, Mr. Waitze did on occassion request a room be held until the sponsoring organization could contact the facility and enter into a written contract.

It is readily apparent that the petitioners are persons of good character, honesty and integrity. They are hardworking businessmen who are outstanding members of their community. They have each given hundreds of hours to help various charities, handicapped children, hospitals, and needy students. They are honest men whose only fault is that they may have become a little overzealous in their attempts to assist other charitable organizations raise funds for needy and worthwhile causes. They are leaders in their fraternal organization and pillars of their community. They are family men who have given unselfishly of themselves to help others. If the charges included having used a

charitable organization's name as a sham so that they could profit from the gaming or if the funds raised did not actually go to the charitable organization, then I would have serious concerns regarding the petitioners good character, honesty and integrity. However, that is not the case. These individuals have the highest possible character and their honesty and integrity are beyond reproach. Accordingly, the petitioners present no risk to the public nor to the integrity of the gaming industry in this State. The petitioners have earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Block, Mr. Greenberg, and Mr. Waitze are persons of good character, honesty and integrity, and are entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioners have established, by clear and convincing evidence, their good character, honesty and integrity under section 102b.

DISPOSITION

It is **ORDERED** that the application of Paul Waitze, Arthur Block, and Stanley R. Greenberg for the issuance of casino junket representative licenses be **GRANTED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 28, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/2/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

August 3, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

K.S

caj

1031

DOCUMENTS IN EVIDENCE

For the Petitioners:

P-1	940 Code of Massachusetts Regulations, Office of the Attorney General 13.00 et seq., regulations governing bazaars
P-2	961 Code of Massachusetts Regulations, State Lottery Commission 1.00 et seq., Rules and regulations
P-3	Massachusetts statutes regarding unfair practices and bazaars
P-4	Letter of Charles F. Yaitanes, selectman, Town of Stoughton, Massachusetts, dated June 23, 1989
P-5	Statement of Cabot Devoll III, dated June 22, 1989

For the Respondent:

R-1a-e	Various booking sheets from Lantana's
R-2a	Not in evidence
R-2b,e & f	Fliers advertising Las Vegas Nites
R-2c & d	AVR Calendars
R-2g	Not in evidence
R-3	Flier advertising Las Vegas Nite
R-4	Not in evidence
R-5	Final judgment by consent
R-6	Not in evidence
R-7	Complaint filed by the Commonwealth of Massachusetts, June 9, 1986
R-8	Not in evidence
R-9	Not in evidence
R-10	Not in evidence

Court Exhibits:

C-1	Letter of Jack Feinberg, Esq., dated February 9, 1988, requesting discovery

D-2 Letter of Frederick J. McDonough, deputy attorney general, dated February 26, 1988, in response to C-1

WITNESSES

For the Petitioners:

Joseph Wine, Esq.
Officer Richard A. Barnes, Randolph Police Department
Michael Godes, C.P.A.
Michael Flatto, C.P.A.
Arthur Block, petitioner
Bernard Coffey, Chief of Police, Sharon, Massachusetts
Martin Callinan
Stanley R. Greenberg, petitioner
Paul Waitze, petitioner
Dr. Edward P. Marran

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-135
LICENSE NO. 49368-21
OAL DOCKET NO. CCC 8830-88
ORDER NO. 89-29-16

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF PATRICIA A. WASHINGTON

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 19, 1989,

IT IS on this 20th day of July 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly PW
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8830-88
AGENCY DKT. NO. 89-EA-135

IN THE MATTER OF THE
RENEWAL APPLICATION OF
PATRICIA A. WASHINGTON
FOR A CASINO EMPLOYEE LICENSE

Joseph Sayegh, Esq., for the applicant (Goldenberg, Mackler & Sayegh)

James Armstrong, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 21, 1989 Decided: June 9, 1989

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE

Patricia A. Washington (applicant) applies to the Casino Control Commission (Commission) for renewal of casino employee license number 49368-21 pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq., 5:12-88. The Division of Gaming Enforcement (Division) objects to renewal of Ms. Washington's license on the basis of her unlawful receipt of unemployment benefits while employed between February 2, 1985 and March 9, 1985. The issues are whether Ms. Washington is: (1) disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)1,(g); (2) whether she can show rehabilitation under N.J.S.A. 5:12-91d; and (3) whether she can establish her good character, honesty and integrity by clear and convincing evidence as required by N.J.S.A. 5:12-89b(2) and 90h. For the reasons set forth, this opinion orders renewal of the application.

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PROCEDURAL HISTORY

The Applicant requested a hearing on November 11, 1988 on the renewal of her license and the matter was transmitted to the Office of Administrative Law on December 5, 1988, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 17, 1989, and the matter was heard on April 21, 1989, when the record closed. The date for submission of the opinion was extended from June 5, 1989 to June 9, 1989 for reasons not relevant to this case.

FINDINGS OF FACT

The material facts are not in dispute. The Division's objection to renewal is based solely upon Ms. Washington's unlawful receipt of unemployment benefits in the amount of $1,228.98 for five weeks between February 2, 1985 and March 9, 1985, while she was gainfully employed at the First Fidelity Bank. Ms. Washington admits unlawfully receiving unemployment benefits while employed, but also claims that she believed that she was entitled to the money and notes that she has made full restitution (P-1). The applicant has an 11th grade education, is the mother of a minor child, and has worked in the casino industry for approximately 10 years. The invesigation performed by the Division did not reveal any unsatisfactory information concerning Ms. Washington's business ability or casino experience.

The Applicant offered the following backround as to the unemployment benefits. She starting working in the casinos in 1980, when her daughter was five years of age, but left the casinos in October of 1984 to devote more time to her daughter's care. Ms. Washington had intended to continue her education in the area of cosmetology after leaving casino employment, but became increasingly concerned with her responsibiliy for and relationship to her daughter, whom she had left frequently in her sister's care while working. Consequently, she decided to stay home with her daughter, instead of returning to school or seeking other employment. She also applied for unemployment benefits in early 1985, but subsequently decided to return to work and obtained a job at the First Fidelity Bank. While employed, Ms. Washington continued to receive unemployment benefits for approximately five weeks between February and March of 1985. During that time, she failed to notify the Division of Unemployment and Disability Insurance of her

new job, and stated that she assumed that she was entitled to receive unemployment benefits because she had paid into the unemployment fund over her working years. Although Ms. Washington claims that she thought she was entitled to benefits at the time she was receiving them, she also admits that, "deep down", she had some misgivings about this. She indicated that she was "saved" in a spiritual and religious sense after receiving the unemployment benefits in 1985 and now freely concedes that her actions were unlawful. At the time, she did not bring her employment to the attention of the Division of Unemployment, which learned on or about April 11, 1986, that she had obtained work at First Fidelity, and demanded repayment of unemployment benefits. She agreed to repay, but had problems doing so in a timely way, complicated by debts related to medical expenses and some procrastination on her part. In August of 1986, the Division of Unemployment withheld benefits from the applicant and applied then against this outstanding debt, which was liquidated as of May 14, 1989.

As indicated, Ms. Washington was "saved" in a spiritual sense in 1985, and continues to go to church three to fur times a week in an effort to stay away from involvment in things "not right." She claims that she has confessed the matter of her unlawful unemployment benefits to God and also to her pastor, the latter of whom (at least) feels that Casinos are evil and the Devil's work, and was unwilling to attend the hearing. The applicant also sought assistance from the Atlantic County Mental Health Center for her own problems and for dealing with her daughter: she found this to be of some help, and her daughter is improving in school. The father of the child is a drug addict, and Ms. Washington explained that she and her daughter have been exposed to the abuse of drugs and alcohol for most of their lives, and are trying, through the help of religion and counselling, to rise above it.

The applicant is currently employed at the Showboat Hotel/Casino as a cage cashier and works with large amounts of cash, of up to one million dollars. She has had no problems on the job, although there was recently a controversy involving the theft ten thousand dollars at the casino, in which she was not involved (another employee was later charged with that theft.) Beyond the unlawful receipt of unemployment benefits in 1985, the applicant has no criminal record whatsoever.

There is no dispute as to the above facts (with the possible exception of the connection between casinos and Satan) and I so **FIND.**

ISSUE

The prehearing order sets forth three issues, including disqualification under N.J.S.A. 5:12-86c(1) and rehabilitation under N.J.S.A. 5:12-91d. The third and ultimate issue on this application for a casino employee license is whether Patricia A. Washington can establish by clear and convincing evidence her good character, honesty and integrity under N.J.S.A. 5:12-89b(2) and 90h, notwithstanding her admitted unlawful receipt of unemployment benefits.

DISCUSSION AND CONCLUSION

(1) Statutory Disqualification

There is no dispute that the offense of receiving unemployment benefits, which the applicant admits, is a statutory disqualifier analogous to theft by deception under N.J.S.A. 5:12-86c(1) and 86g and I so **CONCLUDE.**

(2) Rehabilitation

Notwithstanding Ms. Washington's disqualification because of her receipt of unemployment benefits while employed she may retain her license if she has affirmitively demonstrated rehabilitation within the meaning of N.J.S.A. 5:12-90h. In weighing a claim of rehabilitation, the Commission must consider the following factors:

(1) The nature and duties of the registrant's position applied for;
(2) The nature and seriousness of the offense or conduct;
(3) The circumstances under which the offense or conduct occurred;
(4) The date of the offense or conduct;
(5) The age of the applicant when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident;
(7) Any social conditions which may have contributed to the offense or conduct;
(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Ms. Washington wishes to continue working with her casino license in a gaming related position as a cashier, which is a position of trust, involving the handling of large sums of money.

Factor One

The conduct admitted by the appellant of unlawfully receiving unemployment benefits while employed for several weeks in 1985 involved a theft by deception of money and thus is a serious offense in the contexts of this case.

Factor Two

The circumstances under which the 1985 conduct occurred, reflect no particularly aggravating or mitigating factors, other than that the applicant was then somewhat younger and claims to have been under the impression that she was entitled to receive unemployment benefits while working, due to the fact that she believed that she had paid into the fund over her years of employment. Ms Washington concedes that, despite this belief, she had some misgivings as to the lawfulness of her actions at the time, which was before she had been "saved" in a religious sense.

Factors Three to Six*

The conduct was isolated in that it was limited to a five week period in 1985, but was repeated in the sense that the applicant received several unemployment checks during this period.

Factor Seven

Ms. Washington cites no social conditions contributing to her conduct, other than a difficult life as a single mother surrounded by the abuse of drugs and alcohol.

Factor Eight

However, she offers substantial evidence of rehabilitation in the form of payment of restitution of the unemployment benefits, participation in family counselling and religious activities, as well as an unblemished work record in the casino industry after (and before) the unemloyment incident in 1985.

Having reviewed the factors set forth in N.J.S.A. 5:12-91(d)(1-8), I **CONCLUDE** that the registrant, Patricia A. Washington, has demonstrated his rehabilitation within the meaning of that section.

(3) Good Faith, Honesty and Integrity

In order to qualify for a casino employee license, an applicant must "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." See, N.J.S.A. 5:12-89b(2) and 90b. The applicant thus must establish good character, honesty

* I neglected to obtain the Applicant's age at the hearing, but she appears to be in her mid-twenties.

and integrity as a matter of fact by clear and convincing evidence and not merely as a matter of reputation, See, Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 369 (1982), appeal dismissed, 459 U.S. 1081 (1982). Applicants have been found to lack good character, honesty and integrity as a matter of fact where there was evidence that they have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation or swindling casino patrons by altering dice. See, e.g., Alter v. Div. of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Div. of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983).

The Division took no position on this Applicant's good faith, honesty and integrity at the hearing and leaves the matter to the discretion of the Commission. In light of the applicant's overall record of employment in the casino industry, as well as the evidence of her efforts toward rehabilitation, I **CONCLUDE** that she has shown the required good character, honesty and integrity by sufficient clear and convincing evidence and thus **ORDER** that her Casino Employee License (No. 49368-21) be renewed pursuant to N.J.S.A. 5:12-88. Athough her conduct in unlawfully receiving unemployment benefits adversely reflects on her good character, honesty and integrity and cannot be overlooked and should not be minimized, she has presented sufficient evidence that, notwithstanding that conduct, she possess the qualities required for licensing under N.J.S.A. 5:12-89b(2) and 90b.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6-9-89
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6/9/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 13 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

For Petitioner:

P-1 Petitioner Washington's agreement to repay Unemployment Benefits

P-2 Money order receipt paid by the applicant to Kensington Furniture, Inc.

P-3 Money order receipt paid by the applicant to Steinbach, Inc.

P-4 Letter of September 15, 1986 from the Department of Labor to petitioner

P-5 Letter of May 13, 1986 from the Department of Labor, Division of Unemployment and Disability Insurance to petitioner

For Respondent:

R-1 New Jersey Department of Labor, Division of Unemployment Insurance Claimant Ledger as of March 4 1986.

R-2 Record of hearing completed on April 8, 1986

R-3 Determination and Demand for refund of unemployment benefits mailed on April 11, 1986

R-4 Certificate of Debt issued by the Division of Unemployment and Disability Insurance

R-5 Computer print out of refund balance

WITNESS LIST

For Appellant

Patricia A. Washington

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 355803 and 355804

IN THE MATTER OF THE PETITIONS OF :
MURRELL WATKINS AND ABRAHAM MCDANIEL :
TO INTERVENE IN THE CASINO LICENSE :
RENEWAL PROCEEDINGS FOR BALLY'S PARK :
PLACE, INC. AND RESORTS INTERNATIONAL:
HOTEL, INC. :

O P I N I O N

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair
Valerie H. Armstrong, Vice-Chair
W. David Waters, Commissioner
E. Kenneth Burdge, Commissioner

APPEARANCES

For Murrell Watkins and Abraham McDaniel:

Arnold S. Cohen, Esq.
Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks
50 Commerce Street
Newark, New Jersey 07102

For Bally's Park Place, Inc.:

Kenneth F. Oettle, Esq.
Sills, Cummis, Zuckerman, Radin,
Tischman & Epstein
33 Washington Street
Newark, New Jersey 07102

For Resorts International Hotel, Inc.:

Nicholas Casiello, Jr., Esq.
Patrick Madamba, Esq.

Horn Kaplan Goldberg Gorny
& Daniels
Suite 500 -- 1300 Atlantic Avenue
Atlantic City, New Jersey 08401

For Division of Gaming Enforcement:

Katherine A. Smith, DAG

I. INTRODUCTION

During the "public comment" portion of the January 20, 1988, public meeting of the Casino Control Commission (Commission), Murrell Watkins and Abraham McDaniel (petitioners) alleged that two casino licensees, Bally's Park Place, Inc. (Bally's) and Resorts International Hotel, Inc. (Resorts), had engaged in racial discrimination against their respective bus companies, Ocean Breeze Transit Company, Inc. and Cobra Coach Lines, Inc. As a result, the Commission directed the Division of Gaming Enforcement (Division) to investigate the allegations and to file a report with the Commission. The Division's report, dated September 19, 1988, found that there was no conclusive evidence that racially discriminatory conduct had occurred.

On October 6, 1988, Watkins and McDaniel filed petitions to intervene in the casino license renewal proceedings for Resorts and Bally's. By letter dated November 4, 1988, the Commission staff advised petitioners' counsel that the renewal proceedings in which intervention had been requested were no longer pending since two year license renewals had already been granted to Resorts (in February 1988) and Bally's (in September

1988). Accordingly, petitioners were asked whether they wished to withdraw their petitions.

When no response to the staff's inquiry was forthcoming, petitioners were further advised by letter dated December 1, 1988, that their intervention petitions would be administratively dismissed as moot unless a response was received by December 15, 1988. Petitioners' counsel responded by letter dated December 13, 1988, and asserted that the petitions were not moot because the petitioners would shortly file a rebuttal to the Division's report which would justify the revocation of the casino licenses in question.

On December 29, 1988, petitioners filed their rebuttal to the Division's report and requested a private meeting with the Chairman of the Commission to discuss the rebuttal and submit additional documentary evidence in support of their claims. By letter dated January 4, 1989, petitioners' request for a private meeting with the Chairman was rejected because of the ongoing contested case before the Commission. In light of petitioners' continuing claim that the petitions were not moot, the Commission staff requested petitioners' counsel to brief the mootness issue. The staff also noted that an issue existed as to petitioners' standing to request the revocation of a casino license.

By letter dated January 23, 1989, petitioners' counsel responded to the request for a brief on the issue of mootness by indicating that the documentation submitted with their rebuttal

was significant enough to require the casino licenses of Resorts and Bally's to be revoked. The rebuttal, as amended on January 26, 1989, disputed the Division's findings and alleged that the Division overlooked or misconstrued certain evidence which purportedly proved the petitioners' claims of racial discrimination.

By letter-report dated February 8, 1989, the Division recommended that the petitions be dismissed for mootness and lack of standing. A hearing was held on the petitions at the Commission's February 22, 1989, public meeting. At the inception of the hearing, counsel for petitioners voluntarily withdrew their requests to intervene, conceding that such requests were moot because the license proceedings in question had been concluded before the petitions to intervene were filed. During the course of the February 22 hearing, petitioners raised for the first time the claim that sections 134 and 135 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., confer standing on private individuals to bring license revocation proceedings against casino licensees when such proceedings are based upon allegations of racial discrimination.

II. PETITIONERS' STANDING TO SEEK THE REVOCATION OF A CASINO LICENSE

In considering the petitioners' alternative request for the revocation of the casino licenses of Resorts and Bally's, the

Commission must first determine whether the petitioners have standing under the Act to initiate and prosecute a proceeding to revoke a casino license. For the reasons set forth below, petitioners do not have standing.

Section 76 of the Act, which delineates the duties and powers of the Division, provides in pertinent part that the Division "shall ... enforce the provisions of this act and all regulations promulgated hereunder, and prosecute before the commission all proceedings for violations of this act or any regulations promulgated hereunder." N.J.S.A. 5:12-76a.; emphasis supplied. Moreover, it is the Division's responsibility to "provide the commission with all information necessary for all action under [the licensing provisions] of this act and for all proceedings involving enforcement of the provisions of this act or any regulations promulgated hereunder." Id. Finally, subsection b. of section 76 declares that the Division shall "investigate violations of this act" and "initiate, prosecute and defend such proceedings before the commission, or appeals therefrom, as the division may deem appropriate." N.J.S.A. 5:12-76b.(3) and (4); emphasis supplied.

The inescapable conclusion to be drawn from these statutory provisions is that the Division is responsible for investigating all alleged violations of the Act and, if it believes such action is appropriate, initiating a violation proceeding against a licensee by the filing of a written

complaint with the Commission.[1] Nowhere in the Act is there any express grant of authority to any person other than the Division to initiate or prosecute alleged violations of the Act or regulations. Indeed, given the scope and magnitude of the Division's authority, the Commission would be loathe to impute such authority to any other person in the absence of a clear statutory directive. None appears.

The Commission has consistently held that the filing of a complaint against a casino licensee or a request for the revocation of a casino license is within the exclusive province of the Division. See In the Matter of the Public Advocate's Motion to Intervene in Boardwalk Regency Corporation's Application For Investment Credit Pursuant to N.J.S.A. 5:12-144 (PRN 243405; October 1984) (holding that the Public Advocate may not initiate a proceeding to enforce a casino license condition concerning housing obligations in Atlantic City); Hotel Employees and Restaurant Employees Local 54, et al. v. Read, et al. (Superior Court, Law Division, Docket No. L-86-3965, December 1986) (granting Commission motion to dismiss complaint by Local 54 seeking an order to compel the Commission to seize a casino

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1. Subsection 108a. provides that "[a]ny proceeding against a licensee or registrant shall be brought on by written complaint." N.J.S.A. 5:12-108a.

license and appoint a conservator based on the financial status of a casino licensee); Petition of Brotherhood of Painters and Allied Trades, Local Union No. 277 (PRN 275706; October 1987) (holding that a union local does not have standing to petition for the revocation of a casino license based upon the licensee's alleged violation of the casino hotel facility requirements of the Act and regulations); and Petitions of Boardwalk Properties, Inc. and Pratt Hotel Corporation for a Declaratory Ruling Regarding the Columbus Plaza Site (PRN 245803 and 258803; October 1988) (Boardwalk Properties)(holding that a casino licensee and its co-developer of a proposed casino hotel do not have standing to seek a declaratory ruling that another casino licensee's acquisition of property allegedly needed for the proposed facility violates the pro-competition policies of the Act).

There are two primary reasons why the Legislature gave this exclusive authority to the Division. First, as noted in the Boardwalk Properties matter, the Attorney General and the Director of the Division are charged with allocating the resources of the Division so as to best achieve its responsibilities under the Act. See N.J.S.A. 5:12-55 and 56. Individual private interests should not be permitted to redirect or dilute the efforts of the Division, or divert its attention, by initiating essentially private enforcement proceedings against casino licensees. If such actions could be initiated by private interests, the Division would be statutorily obligated to

participate in the proceedings. See N.J.S.A. 5:12-76. The inevitable result of such a system would be the disruption of ongoing investigations and interference with the prosecutorial discretion of the Division. Clearly, the public policy goal of strict regulation would suffer were the Division required to pursue every private complaint lodged against a casino licensee.

For similar reasons, the Commission should not be required to entertain complaints filed against licensees by private parties. As noted by our Supreme Court,

> [t]he statutory and administrative controls over casino operations established by the [Casino Control] Act are extraordinarily pervasive and intensive .... The regulatory scheme is both comprehensive and minutely elaborate. [Knight v. Margate, 86 N.J. 374, 380-381 (1981)].

If the Commission were required to hear and decide every private complaint which might be filed against a casino licensee by a disgruntled competitor, employee, business associate or patron, the Commission would have virtually no opportunity to allocate its resources so as to best discharge its massive regulatory responsibilities under the Act.

The Commission is not suggesting that members of the public in general and interested persons in particular do not have a role to play in assuring that applicants and licensees under the Casino Control Act meet the rigorous standards of conduct embodied therein. This is precisely why all private

grievances brought to the Commission are referred to the Division -- so that the Division may exercise its investigative and prosecutorial discretion and determine whether the information warrants further action. Indeed, because of its commitment to the policies of equal opportunity, the Commission here took the highly unusual step of directing the Division to conduct a thorough investigation and to report formally to the Commission. The Division did so. Petitioners' disagreement with the conclusion reached by the Division does not, however, give petitioners the right to file their own complaint for license revocation.

Petitioners' attempt to rely on the provisions of sections 134 and 135 of the Act, N.J.S.A. 5:12-134 and -135, is equally unavailing. The petitioners have failed to offer any persuasive reason why these provisions, which define the affirmative action and equal employment opportunity obligations of casino licensees, should be read to grant standing to private parties to impose regulatory sanctions on casino licensees. Subsection 135e., by giving the Commission the discretionary power "[t]o enforce in a court of law the provisions of section 134 or to join in or assist any enforcement proceeding initiated by any aggrieved person," clearly does not purport to empower an aggrieved person to commence a disciplinary proceeding before the Commission. Obviously, the Commission could not serve as judge and prosecutor. Thus, subsection 135e. refers to actions

otherwise properly commenced before courts or other agencies, e.g., the Division on Civil Rights. See N.J.S.A. 10:5-1, et seq. Further, the Commission will not strain to reach an interpretation which would override the explicit delegation of enforcement responsibility granted by the remainder of the Act to the Division.

It is an elementary rule of statutory construction that a single provision of a statute should not be considered in a vacuum; rather, it is to be construed as a whole with reference to the system of which it is a part. Maritime Petroleum Corp. v. Jersey City, 1 N.J. 287-298 (1949). Absent some reason to conclude otherwise, sections 134 and 135 must be read in pari materia with those provisions of the Act, and in particular, section 76, which grant exclusive enforcement authority to the Division. The language of N.J.S.A. 5:12-135e. cited by the petitioners does nothing more than give the Commission the discretionary authority to join in independent enforcement proceedings initiated by an aggrieved party in a court of law or another agency.

Finally, petitioners cannot defeat the evident statutory purpose by invoking the authority of the Commission to reopen a license hearing at any time. See N.J.S.A. 5:12-88, as amended by L. 1987, c.354, §11, eff. January 4, 1988. The fact that the Commission can, without a formal request from the Division, compel a casino licensee to demonstrate its continuin

fitness to hold the license in no way creates a right in a third party to compel the Commission to exercise that authority. Rather, as was done here, the Commission would ordinarily refer any derogatory allegations to the Division for investigation and the Commission would rely on the Division's report in deciding if grounds for reopening a license hearing existed. While petitioners may disagree with the Division's findings, they cannot insist that the Commission reopen the license hearing nor can they interject themselves into the decisional process. A casino license is a matter of public concern and these petitioners have no individual right to object that a particular licensee is, in their view, unfit. Rather, if they have been aggrieved by the actions of a casino licensee, they may seek redress in a legally appropriate forum. That they have tried unsuccessfully to do so is no basis for converting the casino regulatory system into a common law court.

III. CONCLUSION

Petitioners cannot, and do not, dispute that the purpose of their amended petitions is the initiation of proceedings against Resorts and Bally's for the revocation of their casino licenses based upon alleged violations of section 134 of the Act. The Casino Control Act clearly establishes, as a matter of law, that no one other than the Division of Gaming Enforcement may initiate or prosecute a violation or revocation

proceeding against a licensee before the Commission. Accordingly, petitioners do not have standing to file or prosecute an action for the revocation of a casino license, and the instant petitions are hereby dismissed.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chair

Valerie H. Armstrong, Vice-Chair

W. David Waters, Commissioner

E. Kenneth Burdge, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-209
LICENSE NO. 50015-21
OAL DOCKET NO. CCC 9469-88
ORDER NO. 89-31-13

APPLICATION OF KENT WELLS

FOR RENEWAL OF HIS CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 2, 1989,

IT IS on this 10th day of August 1989, ORDERED that the initial decision is modified to amplify the issue of rehabilitation to include:

1. The circumstances under which the offense occurred. Specifically, applicant approached the victim outside of a bar and claimed that she had his cocaine. He dragged her into an alley, hit her in the face, threatened her life, then snatched her purse and ran from the scene.

2. The applicant's version of the underlying circumstances. Specifically, he testified that he merely took her purse in order to prevent her from leaving;

3. A finding that the applicant's version of the facts is inherently implausible and in fatal conflict with his conviction for theft from the person. Moreover, considering further the deference which we give to the ALJ's assessment of the applicant's credibility, we

agree with the ALJ's conclusions that the applicant is not rehabilitated from his disqualifying conviction and lacks the good character, honesty and integrity required for a casino employee license.

IT IS FURTHER ORDERED that the application of Kent Wells for renewal of his casino employee license is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9469-88
AGENCY DKT. NO. 89-EA-209

KENT R. WELLS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Kent R. Wells, petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: May 23, 1989 Decided: June 28, 1989

BEFORE **STEPHEN W. THOMPSON**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter on November 1, 1988, with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license of Kent R. Wells, baed upon its allegation that the petitioner had been convicted of a disqualifying offense pursuant to N.J.S.A. 5:12-86c(1); i.e., theft from the person, N.J.S.A. 2C:20-3 (third degree).

PROCEDURAL ASPECTS

The Division filed its objection letter with the Commission on or about November 1, 1988. Thereafter, petitioner requested a hearing and on December 20, 1988, the

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Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 2, 1989 at which, among other things, the issues were settled and agreed upon. On May 23, 1989, a plenary hearing was conducted at the OAL, Atlantic County Civil Courthouse, 3rd floor, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on May 23, 1989.

ISSUES

The issues to be determined are as follows:

A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2C:20-3 (third degree) theft from the person.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorportated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

UNCONTESTED FACTS

The following facts are neither contested nor in dispute and, therefore, are hereby adopted, by reference, as **FINDINGS OF FACT:**

1. Petitioner is presently the holder of a casino employee license, DGE number 50015-21 with the endorsements for the positions of Blackjack Floorperson and Baccarat Dealer.

2. On November 14, 1987, the petitioner was arrested by members of the Atlantic City Police Department and charged with Robbery, in contravention of N.J.S.A. 2C:15-1, and Resisting Arrest, in contravention of N.J.S.A. 2C:29-

2 (R-2).

3. On December 15, 1987, petitioner was indicted by the Atlantic County Grand Jury number 87-12-2590-C on the charges (R-3).

4. On February 8, 1988, petitioner entered a plea of guilty to the amended charge of theft from the person, in violation of N.J.S.A. 2C:20-3 (3rd degree).

5. On March 25, 1988, the Honorable Steven P. Perskie, J.S.C., New Jersey Superior Court, Atlantic County-Law Division, sentenced petitioner as follows:

Probation: two years
Atlantic County Jail: two years
Violent Crimes Compensation Board
(VCCB): $30.00
Credit for time served: 16 days

6. In the Judgment of Conviction and Order for Commitment, Judge Perskie set forth his reasons for sentencing petitioner as follows:

1. Recommendation by prosecutor - plea bargain agreement;
2. Presumption against incarceration not overcome by need to deter, but some county jail necessary as a deterrent to defandant and others.
3. No need for fine as additional punishment in view of county jail imposition.

7. Petitioner was the holder of casino employee license number 50015-21 at the time of his arrest, the indictment and the entry of his guilty plea to the N.J.S.A. 2C:20-3 offense.

8. Petitioner did not present any documents from his probation officer to indicate whether or not petitioner was in compliance with the terms and conditions of his probation.

9. Petitioner presented no doucments from his present employer nor supervisors

to indicate an awareness of the criminal convictions nor did he present an evaluation of his past or present work performance.

DISCUSSION AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act hgich would qualify such person from holding his license."

The Division contends and petitioner concedes that petitioner's criminal misconduct constitutes a disqualifying offense under Section 86c(1). Consequently, the Division further contends that petitioner's commission of a per se disqualifying offense precludes his holding of a casino employee license.

I **CONCLUDE** that the herein record has established, by way of uncontested facts, that petitioner committed a violation of N.J.S.A. 2C:20-3 (third degree) which is an automatic disqualifying offense for license under N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-90h

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohiibtion against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

(1) The nature and duties of the position applied for;
(2) The nature and seriousness of the offense;
(3) The circumstances under which the offense occurred;
(4) The date of the offense;

(5) The age of the applicant (licensee) when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, ounseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correction work-release program or the recommendation of persons who have or have had the applicant (licensee) under their supervision.

In consideration of petitioner's claim of rehabilitation, the following has been found in this record.

First, petitioner, Kent R. Wells, is the holder of casino employee license no. 50015-21 and is seeking its renewal. Petitioner is presently employed under the casino employee license by the Tropworld Casino and Entertainment Resort as a blackjack dealer. Therefore, petitioner is engaged in actual gaming activities where he has direct and substantial contact with casino patrons.

Second, petitioner committed and entered a guilty plea to one count of theft from the person, in contravention of N.J.S.A. 2c:20-3 (third degree). This is a serious offense and by its very nature, is a disqualifier under section 86c(1).

Third, the offense was committed knowingly by a licensee at the time he was employed in the casino industry.

Fourth, the misconduct occurred on June 11, 1987.

Fifth, the petitioner was 23 years of age at the time of the offense. There was no indication that his misconduct was due to immaturity.

Sixth, the petitioner's criminal misconduct appears to be isolated. However, petitioner's explanation of the incident does not appear to be credible.

Seventh, there were no social conditions which contributed to the offense.

Eighth, it is evident that petitioner has made little or no rehabilitative efforts. He has failed to acknowledge and accept responsibility for his misconduct. On the positive side, the petitioner has not committed any other criminal misconduct. In addition, the respondent has an adequate employment record within the casino industry.

After weighing and assessing the aggravating and mitigating circumstances with regard to rehabiliation, I can only **CONCLUDE** that petitioner has failed to carry his burden to affirmately establish his rehabiliation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Petitioner Wells is required to establish his reputation for good character, honesty and integrity, by clear and convincing evidence under section 90b which incorporates section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual charactr and attributes of good character, honesty and integrity are true key factors. In the Matter of the Application of Resorts International Hotels for a Casino Licensure, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the individual's reputation in issue and objects to licensure under section 89b(2) of the Act, it is the applicant's burden to presnet clear anc convincing proof of facts upon which the trier may resonably reach a conclusion as to the person's suitability for licensure. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Petitioner neither offered live testimony nor affidavits at the hearing to support his contention that he posesses the requisite good character, honesty and integrity for licensure. The only document produced by petitioner with regard to this issue was a letter from Emil Russel, Director of Casino Games, Tropworld Caino and Entertainment Resort (P-1). The letter (P-1) fails to establish, by clear and convincing evidence, that petitioner possesses the requisite good character, honesty and integrity for continued licensure in the industry. The letter (P-1) also fails to indicate an awareness of the petitioner's criminal conviction.

I **CONCLUDE**, therefore, that petitioner has failed to carry his burden to establish good character, honesty and integrity by the statutory standard of proof and as required by N.J.S.A. 5:12-89b(2).

(D) N.J.S.A. 5:12-129

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which may be imposed against the license of any person who has committed a violation of the Act. Here, the Division Seeks the revocation of petitioner's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated thereunder;

c. Any jusitification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activity;

e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. . .

For the reasons previously expressed, it is clear that the petitioner's misconduct consistutes a disqualifying offense under Section 86c(1) and that he no longer possesses the qualifications for licensure. Accordingly, the petitioner's license must be **REVOKED.** I so **CONCLUDE.**

ORDER

It is hereby **ORDERED** that the letter recommendation of the Division against continued licensure of Kent R. Wells be **GRANTED** and that the application for the renewal of casino employee license number 50015-21 be **DENIED.** It is further ORDERED that the casino employee license number 50015-21 be and is hereby **REVOKED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6-28-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

6/29/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 3 1989
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

For the petititoner:

P-1 Letter, dated May 19, 1989, from Emil Russell, Director of Casino Games Operations, Tropworld Casino and Enternatainment Resort

For the respondent:

R-1 Atlantic City, New Jersey Police Department, Investigative Report

R-2 Atlantic City Police Department Arrest Report, dated November 14, 1987

R-3 Indictment, Superior Court, Atlantic County Grand Jury

R-4 Judgment of Conviction and Order for Committment, dated March 25, 1988

R-5 Employment Application of Kent Wells

WITNESS LIST

For the petitioner:

Kent R. Wells

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-386
LICENSE NO. 23629-21
OAL DOCKET NO. CCC 00625-88
ORDER NO. 88-43-12

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. MARLENE WESTHOFF, Respondent.	ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of October 26 and November 2, 1988,

IT IS on this 27th day of November 1989, ORDERED that for the reasons stated on the record, the initial decision is modified as follows:

(1) the respondent is required to make restitution of the $27,069.10 jackpot which she won in violation of section 100(n) as well as any interest or benefit earned on this money;

(2) because the respondent is no longer employed in the casino industry in New Jersey no regulatory purpose is served by imposing the five-day suspension of her casino employee license; and

IT IS FURTHER ORDERED that respondent Marlene Westhoff pay a civil penalty in the amount of $300 and make restitution of the $27,069.10 as well as any interest or benefit earned on this money upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that the $27,069.10 be made available to the general public by placement upon a progressive slot machine meter.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 625-88
AGENCY DKT. NO. 87-386

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARLENE L. WESTHOFF,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Marlene L. Westhoff, respondent, pro se

Record Closed: August 5, 1988 Decided: September 15, 1988

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on April 23, 1987. The complaint charges the respondent with having gambled at Resorts International Casino Hotel on March 19, 1986, while she was employed by the Tropicana Casino Hotel as a blackjack dealer, in violation of section 100n of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). These are the issues:

1. Has the respondent violated N.J.S.A. 5:12-100n, and, if so, what sanctions permitted under section 129 of the act should be imposed?

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2. Should the respondent be required to make restitution of the money won in the course of unlawful gambling activity, pursuant to N.J.S.A. 5:12-129(6)?

3. If restitution is appropriate, should it include any interest earned on the winnings?

4. If restitution is appropriate, to whom should the money be directed?

PROCEDURAL HISTORY

The Division's complaint was filed with the Commission on April 23, 1987. On November 4, 1987, the parties filed a stipulation of settlement with the Commission (Exhibit P-11). At its public meeting of December 15, 1987, the Commission considered the proposed stipulation of settlement submitted by the parties (Exhibit P-12).

By order entered January 25, 1988, the Commission rejected the proposed stipulation of settlement (Exhibit P-13). On January 29, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. On April 5, 1988, a prehearing conference was conducted by Administrative Law Judge Richard J. Murphy. By letter dated April 28, 1988 (Exhibit P-14), Senior Assistant Counsel Dennis Daly confirmed with Judge Murphy the issues which the Commission sought to have addressed in the event the respondent was found to have committed a violation of section 100n of the Casino Control Act. These issues are set forth above and were identified in the prehearing order issued by Judge Murphy on May 11, 1988.

The hearing in this matter was held on May 24, 1988, at the Office of Administrative Law in Atlantic City, New Jersey. Subsequent to the hearing session, the parties were afforded an opportunity to submit legal memoranda on the novel issues in this case. The respondent chose not to submit a memorandum. Part of the Division's submission was received on July 29, 1988. The remainder of the documents necessary to complete the Division's submission were received on August 5, 1988. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. At all relevant times, the respondent held casino employee license no. 23629-21, issued by the Casino Control Commission on November 21, 1980. In March 1986, the respondent was employed by the Tropicana Casino Hotel as a blackjack and baccarat dealer. On March 19, 1986, the respondent gambled briefly at a progressive slot machine in the Resorts International Hotel and Casino. While doing so, the respondent won a jackpot of $27,069.10.

It was the candid and sincere testimony of the respondent that she knew it was unlawful for a casino employee such as herself to gamble. She stated that she had come to Atlantic City that day only to pick up her paycheck and that she had not originally intended to gamble. She had only $20 with her and had put only about $10 in the slot machine when she hit the jackpot.

According to the respondent, her first thought when she saw the amount which she had won was "I'm in trouble." She knew that any amount over $10,000 would be reported and checked out by the Internal Revenue Service, the Division of Gaming Enforcement, and the Casino Control Commission. The Resorts documents recording the progressive slot machine win and the payment to the respondent were admitted into evidence as Exhibits P-5 through P-10. The respondent accepted payment of the jackpot with a check for $26,000 and cash in the amount of $1,069.10.

Acknowledging that her occupation is a blackjack dealer, the respondent testified candidly at the hearing that she answered questions about her occupation untruthfully on March 19, 1986. She told the people at Resorts that she was a homemaker. The respondent explained that she was trying to deceive them and cover up her employment as a blackjack dealer, "to hold off the inevitable." However, the respondent added that she was being truthful when she said that she did not know at the time what she was going to do with the money. She noted that her husband was in a federal prison in March 1986. He had been a frequent gambler at Resorts, but the respondent testified that she had never gambled before.

It was the respondent's testimony that she used the $1,000 in cash to pay pressing family bills, such as her husband's legal expenses and her car expenses. She

endorsed the $26,000 check to her mother-in-law, who then cashed the check and kept $20,000. According to the respondent, she and her husband owed her in-laws more than $20,000 for money which her husband's parents had advanced so that all four could purchase a house in West Berlin, New Jersey. It was the respondent's testimony that her father-in-law had made the mortgage payments on the home for the preceding two years.

While her husband was in prison, the respondent received back $6,000 from her mother-in-law. When her husband was home on a prison furlough, he took the money and lost it gambling. It is the respondent's belief that her mother-in-law invested over $10,000 of the jackpot money in the stock market and lost it in October 1987. The remainder of the money may be in an account in the name of the respondent's mother-in-law, Lenora S. Westhoff.

The respondent testified sincerely that she has had no contact with her in-laws for sometime for reasons of safety. She is in the process of obtaining a divorce and she will sign over her ownership portion of the house as part of the settlement. She considers her husband to be a violent man and she is keeping information concerning her present residence and place of employment from her husband. According to the respondent, she is establishing residency in another state.

The respondent testified that she does not deny any of the facts in this matter. After paying debts, very little of the money remained for the respondent's personal use. The respondent estimated this amount to be about $200. She repeated that she knew gambling by a casino employee was prohibited, and she acknowledged that she had originally agreed to a $300 fine and a five-day suspension of her casino employee license. The respondent also stated sincerely that she was not aware that there was any law which might require restitution of the money which she had won.

Principal Research Analyst Susan Friedland testified that she has been involved in handling section 100n violations for the Division. In her experience, these matters have generally been resolved by the employee's acceptance of a monetary penalty and a license suspension. Computer generated printouts of section 100n cases and their dispositions were admitted into evidence as Exhibits P-1 and P 2. Exhibit P-2 shows 245 cases of section 100n violations, most of which were resolved by the employee's admission of the violation and entry into a stipulation of settlement.

According to Ms. Friedland, the settlement offers made to the casino employees have been based on the employee's position and salary range. These guidelines were set forth by the Casino Control Commission during a public meeting in March 1984. A partial transcript of that meeting was admitted into evidence as Exhibit P-3. According to these guidelines, for a first violation, the license credential would be suspended for a period ranging from 1 to 14 days, and a monetary penalty of between $100 and $250 would be imposed for security employees and other casino employees earning less than $20,000. For dealers and other casino employees earning more than $20,000 but less than $30,000, a monetary penalty between $100 and $500 would be imposed. For box persons and floor persons and other casino employees earning more than $30,000 but less than $40,000, the monetary penalty would be $100 and $750. For pit bosses and other casino employees earning more than $40,000 a year, a monetary penalty between $100 and $1,000 would be imposed.

The Commission also announced the guidelines for repeat offenders. For a second violation, a suspension of the license credential for a period ranging from 15 to 60 days would be imposed, and there would be a monetary penalty between $500 and $2,000 for all categories of employees. In the event of a third violation, revocation of the license credential would be imposed in all cases for all categories of employee. Just prior to the Commission adopting the foregoing figures and time frames as guidelines, Chairman Read stated (Exhibit P-3):

> I would hope these guidelines, if they are being enunciated, as I rather have a feeling they are about to be, will reach the industry and be understood by the licensee as to what is involved and be taken very seriously, as they are intended to be taken. But they are guidelines, they are not a straight jacket. If there are particular appealing reasons we should not be this strict, I can conceive of our reacting to them to some extent. If somebody's conduct is absolutely outrageous, despite the fact that its a first offense, I can conceive of us being more difficult than these guidelines indicate. So as I say, I would like to consider what were are talking about here, they are simply guidelines. They are guidelines for us and they are also guidelines for the licensees.

New Jersey State Police Detective Sergeant William J. Smith testified that he was involved in the investigation of the respondent's gambling. According to Detective Sergeant Smith, a list of all casino employees was cross-matched with a list of the names of all winners of $25,000 or more. This cross-match revealed the respondent's name. Although he understands that the cross-match is performed

routinely, the witness stated that the respondent's case was the first assignment he had received based on such a cross-match. He is not aware of any other agent receiving an assignment as a result of the cross-match of winners with the list of casino employees.

Detective Sergeant Smith testified that he is not aware of any cross-match being performed involving lesser amounts of winnings. When an investigation involves a casino employee who is apprehended while gambling, the investigators simply note whether or not the individual had chips in his possession at the time. According to Detective Sergeant Smith, any chips or currency would be inventoried, but would not be confiscated. Finally, the witness stated that he is not aware of any casino being asked to return any money lost by a casino employee while gambling in violation of section 100n of the act.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

DISCUSSION AND CONCLUSIONS OF LAW

Section 100n of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) provides that it shall be unlawful for any casino employee (other than a junket representative, or any casino employee other than a bartender, waiter, waitress, or other casino employee who in the judgment of the Commission is not directly involved with the conduct of gaming operations) to wager at any game in any casino in this state. It is undisputed in this matter that the respondent was the holder of a casino employee license and was employed as a dealer by the Tropicana Casino on March 19, 1986. On that date, the respondent gambled at a progressive slot machine at Resorts International Hotel Casino.

The Division's proofs establish this conduct and the conduct is admitted by the respondent. Based upon the findings of fact in this matter and the applicable law, I **CONCLUDE** that the Division has established by a preponderance of the credible evidence that the respondent has committed a violation of N.J.S.A. 5:12-100n.

Section 129 of the Casino Control Act authorizes the Commission to impose a broad range of sanctions upon licensees who have violated any provisions of the act or regulations, or who have committed other misconduct. Among the sanctions which are authorized are revocation or suspension of the license and civil penalties

as may be necessary to punish misconduct and to deter future violations, not to exceed $10,000 in the case of any individual licensee. In addition, the Commission may enter cease and desist orders, issue letters of reprimand or censure, and order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant. Any or all of the available sanctions may be imposed in combination with each other.

Section 130 of the act sets forth standards which the Commission shall consider in determining the appropriate sanctions to be applied in a particular case. These standards are as follows:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee or registrant;

d. The prior history of the particular licensee or registrant involved with respect to gaming activities;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the Commission, and not to a finding of a violation itself.

In assessing the risk to the public and to the integrity of gaming operations created by the respondent's unlawful gaming, it is useful to first note the Legislature's finding and declaration of public policy set forth at section 1b(6) of the act:

> 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.

It is also useful to examine policy considerations which led to the prohibition on casino gambling by licensed casino employees. In its Second Interim Report, dated February 17, 1977, the Governor's Staff Policy Group on Casino Gambling stated at page 46:

> Some jurisdictions exclude their entire resident population, and thus their casino work force, from gambling at any casino. Almost all casinos prohibit employee gambling at the employer's casino, and place certain other establishments off-limits. The opportunities for collusion among a highly mobile group of employees with skill and inside knowledge of casino operations is too great to tolerate, and an absolute bar on casino gambling by gaming employee in this jurisdiction is recommended.

The Commission has expressed its concern with the problem of casino gambling by gaming employees (see Exhibit P-3, Commission Guidelines for Section 100n Violation Sanctions). The express purpose for imposition of sanctions for section 100n violations is to deter future violations both by the specific licensee and by the entire population of casino licensees. These guidelines combine the sanctions of monetary penalties and suspensions of license credentials for both first and second offenses. A third offense subjects the licensee to complete revocation of his credential.

The Commission has also expressed its willingness to impose other available sanctions as the special circumstances of a given case might require. Although the Commission did not expressly identify restitution as a possible sanction when setting forth its guidelines (Exhibit P-3), it is apparent from the plain language of section 129(6) of the act that the Commission shall have the authority to order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant. By gambling in a licensed casino facility on March 19, 1986, the respondent won a progressive slot machine jackpot in excess of $20,000. Pursuant to section 100n of the act, it was unlawful for the respondent to so gamble. Consequently, I **CONCLUDE** that the $27,069.10 jackpot was unlawfully obtained by

the respondent. Pursuant to section 129(6) of the act, I further **CONCLUDE** that the respondent is properly subject to the sanction of an order of restitution of this money which she unlawfully obtained.

As noted, the Commission is authorized to order restitution of money which is unlawfully retained by a licensee. The Division argues that the plain intent of the Legislature when including the term "retained" was to authorize recovery of all benefits derived from unlawful acts, including the benefit of any earnings on unlawfully obtained principal. To properly achieve the deterent affect sought from imposition of a sanction, any order of restitution would necessarily include earnings on the unlawfully obtained or retained funds.

It is apparent that the deterent effect of the sanction of restitution would be diminished if a violator were permitted to retain any benefit derived from having unlawfully obtained any money or property. In fact, the benefit of having retained the unlawfully obtained money would increase over time. Thus, I **CONCLUDE** that if it is appropriate to impose the penalty of restitution in a given case, then restitution should include any interest or other benefit which has accrued to the violator who has unlawfully obtained any money or property. As noted in the Second Interim Report at page 54, "it must be emphasized that penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business in this state." There is little or no inducement for a casino employee to unlawfully gamble if he knows that the Commission will not permit any winnings to be retained.

Having concluded that restitution is an available sanction for a violation of section 100n, it must next be determined whether the respondent in this matter should be required to make restitution of the money which she won in the course of her unlawful gambling activity on March 19, 1986. The Division contends that restitution is an appropriate sanction which should be applied in section 100n cases where the amount of the unlawfully obtained winnings is calculable. However, the Division submits that this penalty should be applied prospectively only, and should not be applied in the instant matter. In particular, the Division notes that the Commission has consistently sanctioned licensees who violate section 100n by imposing civil monetary penalties and by ordering the suspension of license credentials pursuant to the Commission's announced guidelines. As restitution has never before been imposed as a sanction for a section 100n violation, and as

restitution was not mentioned among the guideline sanctions, the respondent could not fairly have anticipated such a sanction.

I agree with the Division's contentions. Having unlawfully gambled in violation of section 100n, the respondent is clearly not in a strong position to argue equitable considerations. However, she is entitled to the protections of basic fairness. Since the Commission has never before imposed the sanction of restitution for a violation of section 100n, and had not announced restitution as a sanction among its guidelines, I **CONCLUDE** that it would not be fair to impose the sanction of restitution upon the respondent in this matter. Nevertheless, I recommend that the Commission include among its announced sanction guidelines for violations of section 100n its intention to prospectively impose the penalty of restitution for unlawfully obtained winnings.

If the Commission does not accept my conclusion that it would not be fair to require the respondent in this matter to make restitution, the identity of the party to whom restitution should be made must then be determined. The Division contends that principles articulated in the matter of Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino v. Lipman Cohen, et al, DKT. NO. C-3311-84, should apply. In that matter, the Commission considered the disposition of a potentially illegal slot machine jackpot in the context of a subsequent jackpot win. Having determined that a progressive slot machine jackpot winner would be entitled only to the amount shown on the meter at the time of the win, the Commission decided that "restitution" of a previous illegal slot machine jackpot would not be made to the subsequent winner. Rather, fairness to the general gaming public would be served by requiring the casino to place the disputed amount of the jackpot back on the progressive meter so that it could be made available for a subsequent patron to win.

Based on the foregoing, if restitution were ordered in the present matter, it would appear that the most sensible disposition of the money would be to return it to the casino from which it was obtained, and to then require that it be made available to the general gaming public through placement on its progressive slot machine meter. I so **CONCLUDE**.

Having determined that restitution would not be an appropriate sanction in the present matter, it remains to be determined which penalties should be applied to the respondent for her violation of section 100n. Utilizing the Commission's guidelines for a first violation, it appears that the appropriate penalties to be

applied in this matter would be a suspension of the respondent's casino employee license for a period of five days and a civil monetary penalty in the amount of $300. I so **CONCLUDE**.

ORDER OF DISPOSITION

For the reasons stated above, it is **ORDERED** that the casino employee license of Marlene L. Westhoff be suspended for a period of five days, and it is further **ORDERED** that Marlene L. Westhoff pay a civil monetary penalty in the amount of $300.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 15, 1988 — Joseph F. Fidler
DATE — JOSEPH F. FIDLER, ALJ

Agency Receipt:

9-15-88 — [illegible]
DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

DATE SEP 16 1988 — OFFICE OF ADMINISTRATIVE LAW

jz

1079

INVENTORY OF EXHIBITS

For the petitioner:

P-1	Computer printout of section 100n violations
P-2	Casino Control Commission list of section 100n violations
P-3	Transcript of Casino Control Commission guidelines for section 100n violations
P-4	Memo confirming respondent's employment
P-5	Photos of respondent and identifying information
P-6	Progressive Slot Summary
P-7	Resorts Transaction Report dated March 19, 1986
P-8	Resorts Slot Booth Exchange Payment
P-9	Copy of check for $26,000
P-10	Surveillance Log
P-11	Stipulation of Settlement with attached investigation report
P-12	Casino Control Commission Transcript dated December 15, 1987
P-13	Letter to respondent from Casino Control Commission dated January 25, 1988
P-14	Letter to Judge Murphy from Senior Assistant Counsel Daly dated April 28, 1988

For the respondent:

None

WITNESSES

For the petitioner:

Susan Friedland
Marlene L. Westhoff
William J. Smith

For the respondent:

Marlene L. Westhoff

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-158
APPLICATION NO. 67185-21
REGISTRATION NO. 12138-40
OAL DOCKET NO. CCC 6791-88
ORDER NO. 89-40-17

APPLICATION OF CONSUELO C. WILLIAMS
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 11, 1989,

IT IS on this 12th day of October 1989, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

RECEIVED

SEP 01 1989

CASINO CONTROL COMMISSION
LEGAL DIVISION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6791-88
AGENCY DKT. NO. 88-EA-158

CONSUELO C. WILLIAMS,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Consuelo C. Williams, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: July 12, 1989 Decided: August 28, 1989

BEFORE **JOSEPH F. FIDLER, ALJ:**

STATEMENT OF THE CASE

This matter concerns the application of Consuelo C. Williams (petitioner) for issuance of a casino employee license which would permit her employment in a licensed casino as a teller. By letter report to the Casino Control Commission dated January 19, 1988, the Division of Gaming Enforcement (respondent) objected to the petitioner's licensure. The Division alleges that the petitioner lacks the requisite good character, honesty and integrity required for casino employee licensure under the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based in part upon her record of arrests. There is one issue to be resolved:

New Jersey Is An Equal Opportunity Employer

Has the petitioner established by clear and convincing evidence that she possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Casino Control Act.

PROCEDURAL HISTORY

On September 6, 1988, the Casino Control Commission received the petitioner's request for a hearing on her license application. On September 16, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Administrative Law Judge Stephen W. Thompson conducted a prehearing conference on December 8, 1988.

The matter was subsequently reassigned for hearing. Hearing sessions were held on February 14 and June 20, 1989, in Atlantic City, New Jersey. Following the hearing I determined that review of the hearing transcript was necessary, and the record closed when the complete transcript was received on July 12, 1989.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The petitioner is a 39-year-old resident of Atlantic City, New Jersey. Her two sons, who are 23 and 21 years old, live with her.

The petitioner is the holder of casino hotel employee registration no. 12138-40, issued in February 1982. Since March of 1988, the petitioner has been employed in the housekeeping department at the Showboat Hotel and Casino. A letter from her supervisor, Kenneth R. Burton, was admitted into evidence as exhibit P-1. According to Mr. Burton, the petitioner is a self-motivated employee who is responsible, courteous and trustworthy. He is not aware of any complaints concerning her performance.

The petitioner has a history of hospitalizations for mental illness. She was first admitted to Ancora Psychiatric Hospital in July 1974, with a diagnosis of depressive neurosis. (According to the petitioner's candid testimony, she signed a release so that her Ancora records could be disclosed to the Division of Gaming Enforcement in December 1988. They were admitted into evidence as Exhibit R-1.) The petitioner was admitted to Ancora several times in 1975 and her diagnosis was schizophrenia, paranoid type. The petitioner was admitted twice more in 1979 and twice again in

1980. After a lengthy period without difficulty, the petitioner was again admitted to Ancora twice in 1987. Her diagnosis was schizophrenia, paranoid, chronic (Exhibit R-1).

The petitioner testified sincerely that she normally was hospitalized for no more than a few months at a time. Often the stays were shorter and the longest was about four months. The petitioner has learned that she will become ill again if she stops taking her medicine. Since her last hospitalization, the petitioner has been treated by the Atlantic Mental Heath Center. By report dated February 14, 1989, Center Medical Director Leo T. Brown stated that the petitioner could return to work and that there were no contraindications to the petitioner resuming her duties (Exhibit P-2). At the request of the Division of Gaming Enforcement, Dr. Brown issued a psychiatric report on May 10, 1989 (Exhibit R-3). Dr. Brown noted that the petitioner has been a patient of the Atlantic Mental Health Center since January 1978. When he last saw the petitioner on February 20, 1989, her mental status was:

> She was neat, clean, coherent, relevant, calm, and appropriate; there were no hallucinations or delusions; she was oriented to person, place, and time.
>
> In terms of the patient's long history, and her good response to medication, her overall prognosis is very good.

Dr. Brown described the petitioner's present medication to be Haldol, 20 mgm. and Vistaril, 25 mgm. Dr. Brown also stated a final diagnosis in the psychiatric report. According to the doctor, the appropriate diagnosis for the petitioner is paranoid schizophrenia, in remission.

The petitioner testified candidly that she had been a very sick woman. However, while she is on the appropriate medication, she is normal, and functioning well. The medicine in its present dosage does not make her confused or sleepy and she is not bothered by it. She has learned that taking the appropriate dosage of her medicine for mental illness has allowed her to be both happy and productive.

The petitioner also testified candidly concerning her record of arrests. According to the petitioner, most of them occurred because she was ill. The first was in July 1973, when the petitioner was charged by the Atlantic City Police Department with assault and battery. According to the petitioner, she got into an argument with a neighbor and the neighbor slapped her. The petitioner held the neighbor and the police were called. The petitioner was held in a chair at the police department and she bit the detective who was holding her. The assault charge was subsequently

dismissed and a charge of assault upon a police officer was "no billed" by the grand jury.

A charge in March 1974 of larceny was dropped when the complainant found his money. According to the petitioner, someone started an altercation with her in January 1975, and she was charged with disorderly conduct. This charge was subsequently dismissed.

The petitioner's next arrest occurred in July 1979 while she was hospitalized at Ancora. The Ancora police charged her with atrocious assault. According to the petitioner, she had been asleep in a day room at the hospital when three women jumped on her and pulled her off a couch. The petitioner stated that she took her shoe and hit her attackers to defend herself. All three needed stitches for their injuries. The petitioner stated that she was tied to a bed for five days following that incident and then spent 28 days in the Vroom building. During the entire time, she was not visited by a doctor. The charge was subsequently dismissed by the Winslow Municipal Court. In September 1979, the petitioner was arrested in Atlantic City and charged with disorderly conduct. According to the petitioner she had run away from the hospital and was acting inappropriately on the boardwalk. She was taken back to the hospital.

In May 1985, the petitioner was arrested in Atlantic City and charged with disorderly conduct. The petitioner stated that the arrest involved a bad check. The petitioner stated that she straightened the matter out by making good on the debt. Her last arrest occurred at the Sands Casino in April 1987. The petitioner was charged by the New Jersey State Police with a disorderly persons offense when she allegedly failed to pay for a drink which she had ordered in a casino lounge. The petitioner explained sincerely that she has not had a drink since 1975. However, she was in the casino lounge while her cousin gambled. A waitress told her that she would have to leave the lounge if she did not buy a drink. The petitioner then ordered wine for her cousin. When she stepped out of the lounge to look for her cousin so she could get money to pay for the drink, she was physically grabbed by three security people and was taken to another room. The petitioner denied that she had been hollering or screaming during the incident. She stated sincerely that she wanted to go to court for the matter, but she must have missed her court date when she was again hospitalized. Eventually she went to City Hall to see if she could have the matter straightened out and she was ordered out of the building by the police and told to not come back.

The petitioner also testified concerning an out-of-state arrest. In 1977, she had been traveling in North Carolina when she had to be taken to a hospital. When she was given an injection, she reacted badly and became irrational, throwing things around and causing damage. The petitioner stated that she ended up in a correctional center for three months, during which time she did not see a lawyer.

The petitioner disclosed her 1985 arrest in Atlantic City on her Personal History Disclosure Form (Exhibit R-2). She stated that she knew that her entire arrest record would be checked out and that it would be revealed. In other words, she knew that one arrest on her disclosure form would speak for all of them; they would all be checked. In regard to her application for employment at the Showboat Casino, the petitioner could not recall what she had been asked about her arrest record. She did know that she just wanted a job and that it is hard to get a job when you have been in an institution. She acknowledged that she felt it would affect her chances for getting a job if she disclosed her arrest record. (It must be noted that the Division of Gaming Enforcement has not alleged that the petitioner is disqualified from licensure solely on the basis of any failure to disclose material information.)

The petitioner testified that it is her wish to further herself in the casino industry. She noted that she received a GED when she was 21. She believes that she is capable of doing more than just making beds. The petitioner stated sincerely that one does not go around telling strangers about being hospitalized for mental illness because people will treat you differently. She simply wants a chance for a better position, one that she can grow with. Years of therapy and medication have allowed her to be a functional and gainful employee.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualifications. Among these qualifications is the requirement that an applicant for a casino employee license demonstrate that she possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the act.

The petitioner has candidly admitted both her record of arrests and her numerous hospitalizations for mental illness. She has been well for over two years because she now understands that she must continue to take her medication and take it in the proper dosages. The credible medical evidence in the record establishes that the petitioner's mental illness is in remission and that her overall prognosis is very good.

I was impressed with the petitioner's candor and sincerity. Apparent is her desire to better her circumstances. If she continues to take her prescribed medication, she should have no difficulty remaining law-abiding. I do not view her previous limited disclosure of her arrests and hospitalization as acts of dishonesty. Rather, I believe these were acts of survival. She has performed well in her present casino hotel employment. There is no reason to expect that the petitioner could not continue as a reliable and trustworthy employee.

Based upon the foregoing Findings of Fact and the applicable law, I **CONCLUDE** that the petitioner has sustained her burden of establishing by clear and convincing evidence that she possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Consuelo C. Williams for a casino employee license be granted.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

August 28, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8/29/89
Date

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 31 1989
Date

Elizabeth J. Kazzaz
OFFICE OF ADMINISTRATIVE LAW

jz

1089

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter dated February 13, 1989

P-2 Report of Dr. Brown dated February 14, 1989

For the respondent:

R-1 Ancora records

R-2 Personal History Disclosure Form

R-3 Report of Dr. Brown dated May 10, 1989

WITNESSES

For the petitioner:

Consuelo C. Williams

For the respondent:

Consuelo C. Williams